United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

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P/S

74-2401

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CHAN YUK PO,

Defendant-Appellant.

On Appeal From The United States District Court
For The Southern District Of New York

Appellant's Appendix

LaBERTEAU & McLAUGHLIN
Attorneys for Defendant-Appellant
130 West 42nd Street
New York, N.Y.
279-5898

HARRY ALEXANDER,
of Counsel

UNITED STATES COURT OF APPEALS
FILED
JAN 23 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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DOCKET ENTRIES

JUDGE WYATT

D C. Form No. 100

CRIMINAL DOCKET

74 CR. 732

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	Alan R. Kaufman, AUSA
CHAN YUK PO	264-6433
TONY MOY	
LAI LAI KUEN	
	For Defendant:
	Gustave A. Gerber (Moy & Kuen)
	401 B'way,N.Y.C.10013, 966-9840
	Abraham Solomon (Chan Yuk Po)
	85 Baxter St. N.Y.C. 431-6542

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED	DISBURSED	
07)							
Fine,							
Clerk,							
Marshal,							
ttorney,							
~~Commissioner's Court~~, 21							
~~Warrant~~ 846,812,841(a)(1),(b).							
Consp. to viol. Fed. Narcotic Laws.(Ct.1)							
istr. & possess. w/intent to distr.							
eroin, I.(Ct.2)							
(Two Counts)							

DATE	PROCEEDINGS
7-74	Filed indictment.
9-74	Adjourned to 8-12-74. Stewart,J.
12-74	Deft. Chan Yuk Po, produced ona writ. (Atty. Present) Writ satisfied. Deft pleads Not Guilty, 10 days for motions. Bail fixed by court at $2,500 cash or surety. Case assigned to Wyatt,J. for all purposes. Owen,J.
-19-74	Deft. Tony Moy present (atty G. Gerber present) Deft. enters a plea of not guilty. Bail previously fixed by Magistrate at $5,000 P.R.B. 10 days for motions....Owen,J.

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DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
8-19-74	Deft. Lai Lai Kuen present (atty Gerber present) Deft enters a plea of not guilty. Bail previously fixed by Magistrate at $5,000 P.R.B. 10 days for motions.....Owen,J.		
8-13-74	Copy 5 CHAN YUK PO-Filed CJA Form 21 appointing Shirley Moy on 8-12-74 as interpreter...Owen,J		
8-13-74	CHAN YUK PO-Filed CJA Form 21 Copy 2-approving payment to Shirley Moy dated 8-12-74.....Owen,J.		
8-26-74	CHAN YUK PO-Filed CJA Form 21 copy 5 appointing Caroline H. Lin as interpreter on 8-22-74.....Wyatt,J.		
8-26-74	CHAN YUK PO-Filed CJA Form 21 copy 2 - approving payment to Caroline H. Lin dated 8-23-74.....Wyatt,J.		
8-26-74	CHAN YUK PO-Filed CJA Form 21 copy 5 appointing Caroline H. Lin as interpreter on 8-22-74.....Wyatt,J.		
8-26-74	CHAN YUK PO-Filed CJA Form 21 copy 2 - approving payment to Caroline H. Lin dated 8-22-74.....Wyatt,J.		
8-26-74	TONY MOY-Filed CJA Form 21 copy 5 appointing Caroline H. Lin as interpreter on 8-22-74.....Wyatt,J.		
8-26-74	TONY MOY-Filed CJA Form 21 copy 2 approving payment to Caroline H. Lin dated 8-22-74.....Wyatt,J.		
8-27-74	TONY MOY & LAI LAI KUEN-Filed notice of appearance of Gustave A. Gerber as atty. for defts.		
8-27-74	CHAN YUK PO-Filed notice of appearance of Abraham Solomon as atty for deft		
8-20-74	Pre-trial conference held. Deft. Chan Yok Po. Interpreter Caroline Lin. Abraham Solomon assigned as counsel CJA.....Wyatt,J.		
8-21-74	Pre-trial conference held. Interpreter Caroline Lin.		
8-30-74	Pre-trial confernece held. Trial Sept.9, 1974 9:30 AM.....Wyatt,J.		

Cont'd. on page #3

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DATE	PROCEEDINGS
9-3-74	CHAN YUK PO-Filed CJA Form 21 copy 5 appointing Caroline H. Lin as interpreter on 8-30-74.....Wyatt,J.
9-3-74	CHAN YUK PO-Filed CJA Form 21 copy 2 approving payment to Caroline H. Lin dated 9-3-74.....Wyatt,J.
9-9-74	Defts. Tony Moy & Lai Lai Kuen-(Reporter Jack Greenberg)(attys. present, with interpreter Chung Lo) withdraw their pleas of not guilty on count 1 and plead guilty to count 1. Sentence Oct. 18, 1974 at 2:30 P.M. Rm. 10. Pre-sentence investigation ordered. Bail cont'd. Trial begun as to deft. Chan Yuk Po, with interpreter Chung Lo & a Jury.
9-10-74	Trial cont'd.
9-11-74	Trial cont'd. Summations & charge. Jury deliberating.
9-12-74	Trial cont'd. Jury deliberations cont'd. Jury finds the deft. Po not guilty as to count 1, and guilty as to count 2. Sentence Oct. 25, 1974, 2:30 P.M. Pre-sentence investigation ordered. Deft. cont'd. remanded in lieu of bail, increased from $25,000 cash or surety to $50,000 cash or surety.....Wyatt,J.
9-13-74	CHAN YUK PO-Filed CJA Form 23-Financial Affidavit.
9-16-74	CHAN YUK PO-Filed CJA Form 21 copy 5 appointing Caroline H. Lin as interpreter on 9-13-74 as of 9-9-74.....Wyatt,J.
9-16-74	CHAN YUK PO-Filed CJA Form 21 copy 2 approving payment to Caroline H. Lin dated 9-9-74.....Wyatt,J.
9-16-74	TONY MOY-Filed CJA Form 21 copy 5 appointing Caroline H. Lin as interpreter on 9-9-74.....Wyatt,J.
9-16-74	TONY MOY-Filed CJA Form 21 copy 2 approving payment to Caroline H. Lin dated 9-9-74.....Wyatt,J.
9-[illegible]3-74	CHAN YUK PO-Filed ORDER that Mrs. Caroline H. Lin be engaged as interpreter for a fee not to exceed $30.00, to assist the Probation Officer to interview deft.....Wyatt,J.
9-[illegible]3-74	TONY MOY & LAI LAI KUEN-Filed ORDER that Mrs. Caroline H. Lin be engaged as interpreter, for a 3 hour period, fee not to exceed $30.00, to assist the Probation Officer to interview defts.....Wyatt,J.
10-8-74	LAI LAI KUEN-Filed JUDGMENT and ORDER OF PROBATION (atty present)-It is adjudged that the imposition of sentence on count 1 is suspended, and the deft is placed on UNSUPERVISED PROBATION, for a period of TWO (2) YEARS, Special condition of probation being that deft. follow the directions of the Immigration and Naturalization Service as to deportation, and that deft stay outside the United States for the period of her probation. Count 2 is dismissed on motion of deft's. counsel with consent of the Government. .....Wyatt,J. Issued copies 10-22-74.

-over-

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DATE	PROCEEDINGS
10-18-74	TONY MOY-Filed JUDGMENT and COMMITMENT (atty present)-It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on count 1, pursuant to Title 18, Section 3651, U.S. Code, on condition the deft. be confined in a jail or treatment type institution for THREE (3) MONTHS, THE REMAINDER OF THE SENTENCE of imprisonment is suspended and the deft. is placed on probation for a period of TWO (2) YEARS, SUBJECT to the standing order of this court. Count ___ is dismissed on motion of deft's. counsel with consent of the Government. Deft. continued on present bail ($5,000) until October 25, 1974 at 10:30 A.M. at which time deft. is to surrender to the U.S. Marshal in room 506 for service of sentence.....Wyatt,J. Issued commitment 10-22-74.
10-25-74	CHAN YUK PO-Filed JUDGMENT and COMMITMENT (atty Present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS, Pursuant to the provisions of Section 841, Title 21, U.S. Code, deft. is placed on Special Parole for a term of THREE (3) YEARS, to commence upon the expiration of confinement ....Wyatt,J. Issued commitment 10-30-74
10-25-74	CHAN YUK PO-Court directs the U.S. Attorney to notify Immigration & Naturalization Service of the conviction & sentence, so that if this deft. is deportable he will be deported.....Wyatt,J.
10-29-74	CHAN YUK PO-Filed deft's. notice of appeal from the Judgment of Conviction dated 10-25-74 and Order of the Court. Leave to proceed on appeal in forma pauperis, Granted. SO ORDERED.....Wyatt,J. (notice mailed to Chan Yuk Po, 427 West St. N.Y.C. 10014 and U.S. Attorney's Office.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature]
Deputy Clerk

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

UNITED STATES OF AMERICA, INDICTMENT

-v- 74 CR 792

CHAN YUK PO, et al.

- x

The Grand Jury charges:

1. From on or about the 1st dsy of June, 1974 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, CHAN YUK PO, TONY MOY, and LAI LAI KUEN, the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the 16th day of July, 1974, the defendant TONY MOY went to apartment 70 at 50 Bayard Street, New York, N.Y.

2. On or about the 16th day of July, 1974, the defendant CHAN YUK PO gave a package containing approximately eleven ounces of heroin to the defendant LAI LAI KUEN.

3. On or about the 16th day of July, 1974, the defendant LAI LAI KUEN possessed and distributed approximately eleven ounces of heroin, in apartment 70 at 50 Bayard Street, New York, N.Y.

(Title 21, United States Code, Section 846).

SECOND COUNT

The Grand Jury further charges:

On or about the 16th day of July, 1974, in the Southern District of New York, CHAN YUK PO, TONY MOY, and LAI LAI KUEN, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately elevan ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

s.
Foreman

s. Paul J. Curran
United States Attorney

A-7

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT C
FILED
OCT 25 1974
S. D. OF N.Y.

United States of America

v.

CHAN YUK O

No. 74 Cr. 792

On this 25 th day of October, 19 74 came the attorney for the government and the defendant appeared in person and[1] by Abraham Solomon, Esq. Interpreter ~~XXXXXXX~~ Caroline Lin, present in court.

IT IS ADJUDGED that the defendant upon his plea of[2] not guilty, and a finding of guilty by a jury,

has been convicted of the offense of unlawfully, intentionally and knowingly combined, conspired confederated to distribute and possess with intent to distribute Schedule I narcotic drug controlled substances.

(TITLE 21, U.S. Code, Section 846).

as charged[3] in count 1,

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] THREE (3) YEARS. Pursuant to the provisions of Section 841, Title 21, U.S. Code, defendant is placed on Special Parole for a term of THREE (3) years, to commence upon the expiration of confinement.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Inzer B Wyatt

United States District Judge.

Raymond F. Burghardt

Clerk.

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

***

AFTERNOON SESSION

2:15 p.m.

(Jury present.)

THE COURT: The Government will call its first witness.

MR. KAUFMAN: The Government calls Joseph Salvemini.

J O S E P H P. S A L V E M I N I, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q By whom are you employed?

A By the United States Department of Justice as a special agent with the Drug Enforcement Administration.

Q How long have you been a special agent with the Drug Enforcement Administration?

A Six years.

THE COURT: If you please, try to keep your voice up so that people at the back table and actually everywhere in the room can hear you, and especially the furthest jurors. It is not easy.

All right. Go on.

Q Directing your attention to July 16, 1974, were you on duty on that day?

A Yes, sir, I was.

Q And what was the nature of your assignment?

A I was operating in an undercover capacity at the time.

Q What was the nature of your assignment that day in your undercover capacity?

A I was attempting the undercover purchase of approximately a pound of what we call Chinese brown rock heroin.

THE COURT: Chinese brown rock?

THE WITNESS: Yes, sir.

THE COURT: Brown rock heroin?

THE WITNESS: Yes.

THE COURT: All right.

How many ounces in a pound?

THE WITNESS: Sixteen ounces.

THE COURT: All right.

Q How much money was that heroin to cost you in that transaction?

A I was supposed to pay $30,000.

Q Where were you on July 16th?

A I was in Apartment 70 at No. 50 Bayard Street in

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the Chinatown section of Manhattan.

Q And did you have $30,000 with you?

A Yes, sir, I did.

Q And what happened in that apartment in connection with this transaction?

A Well, I believe it was approximately 4:30 in the afternoon, there was a knock on the door and the informant opened the door and there was an individual that we subsequently identified as Mr. Tony Moy, and he was at the door.

Q You mentioned an informant. Is this a confidential informant?

A Yes, it is.

Q And what was the name of the informant?

A Jean Lee.

THE COURT: This was a woman?

THE WITNESS: Yes.

Q Is she also known as Jane Lee?

A Yes.

Q Can you describe her?

A She is a female Chinese woman of approximately 65 years of age. I guess she is about five feet tall, heavy build, dark hair.

Q What happened when there was a knock on the door?

A The informant opened the door and there was an individual standing in the doorway we subsequently identified as Tony Moy.

Q Is that the Tony Moy named as defendant in this indictment?

A Yes, sir, that's correct.

Q Then what happened?

A The informant had a conversation with the Chinese Mr. Moy which she related to me.

Q And what was that conversation?

MR. SOLOMON: That is objected to, your Honor.

THE COURT: I will permit it. Overruled.

A She told me that Mr. Moy wanted me to leave and give her the money so that she could show him the money, and I refused to do this, and in the alternative that Mr. Moy wanted me at least to leave the room so he could come inside and count the money and that I could stay in a back bedroom. And again I refused.

Ultimately we arrived at a compromise that I would stand by the door and just flip through the money so that he could see it and be satisfied that it is there.

That is what I eventually did. I went to the doorway with the $30,000 and flipped through it and he looked at it and there was some further conversation with

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the informant and he left to get the package of heroin.

Q That was Tony Moy you are referring to, is that right?

A That's right.

Q What happened next after Tony Moy left?

A Sometime later a female, a Chinese female we subsequently identified as Lai Lai Kuen, came to the door and she also had a conversation with the informant.

Q Is that the Lai Lai Kuen who is named as a defendant in this indictment?

A Yes, sir, that's correct.

Q What happened after that conversation?

A Lai Lai Kuen left and sometime thereafter, a short while, approximately ten minutes or so, fifteen minutes, the buzzer to the apartment rang and there was a conversation between the informant and Lai Lai Kuen over the intercom system in the room, and the informant left, went downstairs to meet with Lai Lai Kuen, came back and told me that Lai Lai Kuen --

MR. SOLOMON: Your Honor, I'm sorry, sir. I must raise an objection to all this conversation. These are conversations between parties. I understand this is a conspiracy, but this defendant did not conspire and had nothing to do with it, unless your Honor is taking it subject

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to connection.

THE COURT: I will take it subject to connection.

Overruled.

A At that time the informant told me that Lai La Kuen had told her that they only had eleven ounces of heroin and that the price was $1,875 an ounce and for me to remove the remainder of the money, which I did.

Q And do you recall how much money that left to be paid for the eleven ounces of heroin?

A Yes, sir. It was $20,625, as I recall.

Q And did you remove the remaining amount of money?

A Yes, sir.

Q And what happened next?

A Sometime thereafter, I guess it was about half-past five or so, the defendant Lai Lai Kuen came back to the door, there was a knock on the door of the room, which the informant opened up, and I observed again Lai Lai Kuen at the door, and the informant and Lai Lai Kuen had a conversation in Chinese.

Lai Lai Kuen handed the informant a brown paper bag which the informant turned around and in turn handed to me. I took the brown paper bag and went into a back room and I examined the contents of it and it contained, I believe it was, twenty-two half-ounce packages of Chinese brown rock

defendant.

THE COURT: Lai Lai Kuen, he says.

MR. SOLOMON: Yes.

THE COURT: He says Lai Lai Kuen gave it to Jeanie Lee, the informer, and Jeanie Lee gave it to you?

THE WITNESS: Yes.

THE COURT: Did you see Lai Lai Kuen give it to Jeanie Lee?

THE WITNESS: No. The informant had her back to me. She had a conversation with Lai Lai and she just turned around and handed it to me. I didn't see the physical transfer.

THE COURT: But somebody was at the door?

THE WITNESS: It was Lai Lai Kuen. I saw that.

THE COURT: And after the conversation at the door, Jeanie Lee comes and gives you this package?

THE WITNESS: That's correct.

THE COURT: All right. I will admit it. Mark it.

(Government's Exhibit 1 for identification received in evidence.)

MR. KAUFMAN: May I read into the record the stipulation previously agreed to?

THE COURT: You may.

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heroin.

I opened one of the packages and administered a field test, a Marquis reagent test, to a small portion of the contents. I got a positive reaction.

THE COURT: Meaning what?

THE WITNESS: It tested positive for an opium derivative, heroin.

THE COURT: Thank you.

Q I show you what has been marked Government's Exhibit 1 for identification and ask if you can identify this.

A Yes, sir. This is the plastic package into which I placed the substance which I was handed on the 16th of July, namely the twenty-two half-ounce packages of Chinese brown rock heroin and, of course, the paper ba .

Q And does your signature appear on the evidence sticker?

A My signature is across the evidence sticker and on the seals close to the edge of the envelope.

MR. KAUFMAN: The Government would offer Government's Exhibit 1.

MR. SOLOMON: I have no objection to Exhibit 1, being the narcotics that this witness said he got from someone on Bayard Street not in the presence of this

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MR. KAUFMAN: It is hereby agreed and stipulated that if Jeffrey Weber were called as a witness, he would testify that he is a chemist with the Drug Enforcement Administration, that he examined and analyzed the substance which is in evidence here as Government's Exhibit 1, and that the results of his analysis were that Government's Exhibit 1 is approximately eleven ounces of heroin which is 34.4 percent pure.

MR. SOLOMON: That stipulation is consented to. However, I would like the stipulation to reflect that although I concede that the chemist would so testify, we do not admit that this narcotics came from this defendant.

THE COURT: No. I understand. The stipulation may be accepted by the jury in the same fashion as if Weber were called to testify. In other words, counsel have agreed that if Weber were called, he would testify that he was a chemist with the Drug Enforcement Administration, that he tested Government's Exhibit 1 and he found it to contain approximately eleven ounces of heroin.

All right.

MR. SOLOMON: Thank you, your Honor.

BY MR. KAUFMAN:

Q Did you participate in the arrest of the defendant Lai Lai Kuen on the 16th?

A Only insofar as I exited the apartment and walked down the hallway with her and with the informant and upon my signal all three of us were placed under arrest.

Q And where was she arrested in relation to Apartment 70?

A Down the hallway from Apartment 70 at 50 Bayard Street.

Q Directing your attention to August 1, 1974, were you on duty on that day?

A Yes, sir, I was.

Q And did you participate in the arrest of the defendant Chan Yuk Po on that day?

A Yes, sir, I did.

Q And do you see Chan Yuk Po here in court?

A Yes, sir, I do. He is the gentleman seated in the center seat at counsel table.

THE COURT: I think the record should reflect that the identification has been made.

MR. SOLOMON: No question about it.

THE COURT: All right.

Q Agent Salvemini, on that occasion did you seize anything from the possession of Chan Yuk Po?

A Yes, sir, I did.

Q What was that?

A I believe it was an immigration type visa, a re-entry visa into the United States.

Q I show you what has previously been marked Government's Exhibit 2 for identification and ask if you can identify that as the re-entry permit which you seized from the defendant Chan Yuk Po.

A Yes, sir, it is.

MR. SOLOMON: May I see it for a moment?

THE COURT: Certainly.

MR. SOLOMON: No objection.

THE COURT: Without objection it will be received.

(Government's Exhibit 2 for identification received in evidence.)

MR. KAUFMAN: I have no further questions.

CROSS-EXAMINATION

BY MR. SOLOMON:

Q Mr. Salvemini, on July 16, 1974, where were you, sir?

A At the time in question, I was at 50 Bayard Street, Apartment 70.

Q Who was the first person that you met there?

A Aside from the informant, the first person --

Q Who was the first person that you met there? I want to know who you met first.

A When I entered the premises, the informant.

Q Would you please keep your voice up?

You entered the premises. Whom did you meet?

A I met with the informant.

Q Who?

A With the informant.

Q And the informant opened the door for you?

A Yes.

Q Did the informant live in that apartment?

A Yes.

Q Who was the second person that you met in that apartment on July 16, 1974?

A An individual that we subsequently identified by the name of Tony Moy.

Q That was a male who was here this morning? Did you see him?

A Yes, sir.

Q Did you have a conversation with Moy?

A No, sir, I didn't, not directly.

Q Did you have a conversation with Miss Kuen?

A No, sir, not directly.

Q You only had a conversation with the informant.

A That's correct.

Q And the informant was of Chinese oriental

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FOLEY SQUARE, NEW YORK, N.Y.

extraction?

A She is Chinese.

Q Do you know what language she spoke in?

A She is bi-lingual.

Q A dialect?

A Bi-lingual.

THE COURT: I assume you mean she speaks English fluently and Chinese?

THE WITNESS: Yes, sir, that's correct.

Q Did you speak to her in English or in Chinese?

A I spoke to her in English.

Q And when the informant spoke to Mr. Moy, did the informant talk to Moy in English or in Chinese?

A I assume it was Chinese, sir.

Q Not what you assume. You were there.

A I couldn't tell it from Thai or Japanese or anything else. It was apparently an oriental dialect. I don't want to swear it was Chinese.

Q Did you understand the conversation between Moy and the informer?

A Absolutely not.

Q Then the informant spoke to you in English, is that correct?

A That's correct.

Q I beg your pardon?

A That's correct.

Q Now, you don't know whether the conversation that the informant had with Moy was the same conversation that the informer had with you.

A I have no way of knowing.

Q And you never spoke to this defendant on that date, did you?

A Absolutely not.

Q Or on any other date?

A On the day I arrested him.

Q Did you speak to him in Chinese?

A No, sir.

Q But on the 16th of July of this year, you are positive that the informer spoke to Kuen in a language you didn't understand, is that correct?

A That's correct.

Q And that you never spoke to this defendant on that date, is that correct?

A That's correct.

MR. SOLOMON: Thank you. That's all, your Honor.

THE COURT: Anything else?

MR. KAUFMAN: No redirect.

THE COURT: Thank you, Agent. You may be excused.

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(Witness excused.)

THE COURT: Next witness.

MR. KAUFMAN: The Government calls Lai Lai Kuen.

(Chung Lo was sworn as a Chinese Interpreter by the Clerk of the Court.)

L A I L A I K U E N, called as a witness by the Government, being first duly sworn, testified through the Chinese Interpreter as follows:

MR. SOLOMON: Your Honor, may I ask your Honor to ask the interpreter, when he interrogates the witness, to keep his voice up so that my client can hear the Chinese?

THE COURT: Yes.

MR. SOLOMON: Thank you.

THE COURT: Mrs. Lai, try to keep your voice up. And Mr. Interpreter, will you in interpreting try to keep your voice up so that Mr. Chan can hear you in Chinese.

THE INTERPRETER: Yes, I will.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Is it Miss Lai or Miss Kuen?

A Miss Lai.

Q Miss Lai, how old are you?

A 35.

Q And where were you born?

A Canton.

Q What year did you come to this country?

A 1972.

Q And what country are you a citizen of?

THE INTERPRETER: I don't follow you, sir.

Q Of what country are you a citizen?

A Thailand.

MR. SOLOMON: You see, your Honor, my interpreter doesn't hear it, the defendant doesn't hear it and I have trouble hearing it, too. I don't want to be annoying, but I can't help it.

THE COURT: Well, so far Miss Lai says that she is a citizen of Thailand.

MR. SOLOMON: Yes, I got that.

THE COURT: You are a Thai by citizenship.

THE WITNESS: Yes, I am citizen of Thai.

THE COURT: But you are ethnically Chinese?

THE INTERPRETER: She was born in China, married to a Thai citizen, naturalized as a Thai.

THE COURT: All right.

BY MR. KAUFMAN:

Q Are you the Lai Lai Kuen who is named as a

defendant in the indictment in this case?

A Yes.

Q Have you pleaded guilty to Count 1 of this two-count indictment?

A Yes.

Q Count 1 charging you with conspiring to violate the federal narcotics laws.

A Yes.

Q Have you been sentenced as yet on your plea of guilty?

A No, not yet.

Q Have any promises been made to you in connection with your plea of guilty and your testifying here for the Government?

A No.

Q Has the Government told you that it would inform the Judge before you are sentenced as to the extent of your cooperation to the Government?

THE INTERPRETER: Sorry. I didn't get that.

Q I'll say part of it and you translate part. Would that be easier?

THE INTERPRETER: All right.

Q Have you been informed by the Government that the Government will inform the Judge, his Honor Judge Wyatt,

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prior to the date you are sentenced as to the extent of your cooperation in this case? That is the question.

A No.

MR. SOLOMON: Your Honor, I will help Mr. Kaufman clarify this.

If Mr. Kaufman will make a statement that he so informed this witness that the Government will tell your Honor of her cooperation, I will take his word that she was so informed.

THE COURT: Yes.

MR. SOLOMON: I think she can't understand, so am willing to go that far. Mr. Kaufman's word is good enough that he told her that he would inform your Honor of her help to the Government.

MR. KAUFMAN: That's correct.

THE COURT: What is Mrs. Lai trying to say, Mr. Interpreter? She was about to say something to you. Ask her what she wants to say.

THE INTERPRETER: Try to say the whole thing so she can understand what you mean.

Q She wants me to repeat it again?

A Yes.

THE COURT: I don't think that is necessary. I think I and the jury and Mr. Solomon will all agree that

the Government has said that, in the sentence of this lady, they are going to tell me the extent that she cooperated.

MR. KAUFMAN: That's correct.

THE COURT: It is perfectly obvious. Mr. Solomon agrees.

MR. KAUFMAN: Thank you, your Honor.

BY MR. KAUFMAN:

Q Miss Lai, do you know a man by the name of Chan Yuk Po?

A Yes.

Q Do you see him here in the courtroom?

A Yes. That's him over there.

MR. KAUFMAN: May the record reflect that she has indicated the defendant.

THE COURT: Is the identification conceded, Mr. Solomon?

MR. SOLOMON: Yes, your Honor.

THE COURT: All right. The identification is conceded. The witness identified the defendant Chan.

Q Do you know Chan Yuk Po by any other name?

A I usually call him Uncle Poy.

THE COURT: P-o-y?

THE INTERPRETER: Yes, P-o-y.

Q When did you first meet Chan Yuk Po?

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A About four or five months ago.

Q And what were the circumstances of your meeting him?

A I was introduced by Tony and having coffee in a coffee shop with other friends.

Q You say you were introduced by Tony. What is Tony's full name?

A Tony Moy.

Q Is that the Tony Moy who is named as a defendant in this indictment as well?

A Yes.

Q And what is your relationship with Tony Moy?

A He lives with me.

Q And do you recall the name of the coffee shop where you first met Chan Yuk Po?

A Mai Lai Wah.

Q Did you and Tony continue to see Chan Yuk Po after the first time you met him?

A Yes. A few times.

Q Did there come a time when Chan Yuk Po asked to borrow money from you?

A Yes.

Q Did he ask you directly or did someone else ask you on behalf of Chan Yuk Po?

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A He directly, through Tony Moy, asked me to borrow the money, $2,000.

Q $2,000?

A Yes.

Q And about how long after your first having met Chan Yuk Po did this occur?

A About a few days. I cannot remember.

Q Were you given a reason why he needed $2,000?

A He told me he lost in gambling.

Q And did you give Chan Yuk Po $2,000?

A Yes.

Q Did there come a time when Chan Yuk Po asked you for more money?

A Yes. When he go back to Hong Kong, he asked me additional loan for $3,000.

Q How long after your having given him the $2,000 did he ask you for the $3,000?

A I would say around two to three weeks.

Q And did he tell you why he needed $3,000?

A He told me he was going back to Hong Kong, doing some business, and he needed $3,000 to buy Chinese medicine from Hong Kong.

I told him I don't have that $3,000 but I will try to borrow from a girl friend of mine, and if you don't

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need it I don't send it to you, but if you need it urgent, then I will send it back to Hong Kong, give to you.

Q Did you give Chan Yuk Po $3,000 before he went to Hong Kong?

A No. I was remit by cable later on. He was sending two letters to me and two long distance calls from Hong Kong. Then I remit the money.

Q I gather from what you say, then, that there came a time when Chan Yuk Po went to Hong Kong, is that right?

THE INTERPRETER: Later on?

MR. KAUFMAN: After he asked for the $3,000.

A Yes.

Q Do you recall about how long ago this was that Chan Yuk Po went to Hong Kong?

A I would say around two months ago, roughly.

Q Did you hear from him while he was in Hong Kong?

A Yes. I received two letters from Hong Kong and also two long distance call from Hong Kong. And he asked me to send him the money right away.

Q The $3,000?

A Yes.

Q And the first time that he called you, did you agree to send Chan Yuk Po $3,000?

A The first time when he called, I promised him I

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will try my best to borrow the money. And after few days, another call come in, then I promised him I would send the money right away.

Q Are you saying he called you a second time?

A Yes.

Q And what did he tell you the second time that he called you?

A He asked me to send him money right away.

Q Did he say why he needed it?

A He told me he is buying some Chinese medicine for importing.

Q And did you agree to send him $3,000?

A Yes.

Q Where did you get the $3,000 from?

A I was withdraw in my bank account and send by another bank.

THE COURT: Did you know that he was going to buy heroin?

THE WITNESS: No.

Q I show you what has been marked Government's Exhibit 6 for identification and ask if you can identify that bankbook.

A Yes.

Q I notice a very long name on the page. Is that

your name (indicating)?

A Yes.

Q And is that your name in the Thai language?

A Yes.

MR. KAUFMAN: The Government offers Exhibit 6.

MR. SOLOMON: No objection. We concede he got the $3,000. The defendant will concede that $3,000 was received.

THE COURT: All right. Without objection, it will be received. Mark it.

(Government's Exhibit 6 for identification received in evidence.)

MR. KAUFMAN: May I just read one entry from this to the jury, your Honor?

THE COURT: Yes.

MR. KAUFMAN: On page 1 of the bankbook.

THE COURT: What bank is it?

MR. KAUFMAN: The Manhattan Savings Bank, 38 Bowery at Canal Street.

THE COURT: All right.

MR. KAUFMAN: On the date May 23, 1974, there is an indication that there was a $3,000 withdrawal.

Q Miss Lai, what did you do with the $3,000?

A After I withdraw the $3,000, I give to Tony Moy,

and next day Tony remit the money through the cable through Chase Manhattan Bank.

Q Are you saying that he wired money to Hong Kong?

A Yes.

Q Do you know if Chan Yuk Po received the $3,000?

MR. SOLOMON: We concede it.

THE COURT: The defendant doesn't dispute it. All right. So we can take that understanding. The defendant Chan received the $3,000 sent to him by Miss Lai. All right.

Q Did Chan Yuk Po thereafter return from Hong Kong?

A Yes.

Q And about how long ago was that?

A I don't remember exactly the date, but it was more or less two months.

Q Two months ago?

A In that neighborhood.

Q How did you first hear from him when he returned to this country?

A He call me from Boston and told me he is back home. I asked him when he will be in New York.

He said, "By tomorrow. I come to New York to see you."

Q And did you thereafter see Chan Yuk Po?

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A Yes.

Q And when was that that you saw him?

A I don't remember the date, but it was three or four days after he returned from Hong Kong.

Q And where did he come to see you?

A He came to my home.

Q When he first came to your home that day, was Tony Moy home?

A No. He wasn't home.

Q When Chan Yuk Po arrived at your home, did he have anything with him when he came?

A Yes. He brought radio with him.

Q And what happened after he arrived?

MR. SOLOMON: Your Honor, the interpreter says she doesn't hear.

THE COURT: Yes. Try to keep your voice up.

MR. SOLOMON: May we have the question and answer read so that the interpreter can tell the defendan

(Record read.)

A When he come up to see me, brought a radio with him and I asked him, "What did you buy from Hong Kong?"

He said, "I leave the radio here. I go downstairs and come back later."

Then he left.

Q Did he return later that day?

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A Yes.

Q Was Tony Moy home when Chan Yuk Po came back?

A Yes.

Q What happened when Chan Yuk Po returned to your apartment?

A When he returned and both Tony Moy and I was in the apartment, I asked him, "What did you bring back from Hong Kong, is that the only thing you bring back, a radio?

And he go to close the door and --

MR. SOLOMON: Can't hear you, sir.

A He closed the door and take out a screwdriver, open up the radio, and took out white powders bag in the radio.

Q Did Chan Yuk Po tell you what that substance wa inside the radio?

A Yes.

Q And what did he say it was?

A Yes. It is a white powder. We usually say white powder. In Chinese it is heroin.

Q I show you what has already been marked Government's Exhibit 1. Does this look like the substance that was inside the radio?

A Yes.

Q Was the white powder inside the radio packed in

small packages as is Government's Exhibit 1?

A Yes. Small packages.

Q Did Chan Yuk Po say what he was going to do with the heroin?

A He told me it is worth about few grand, something like $30,000.

Q What did he do after he unscrewed the radio and showed you the heroin?

A He took the heroin away with a small brown paper bag.

Q Before he left with the heroin, did you ask him when you would get your money back that you had loaned him?

A Yes. He told me after sell the heroin, he would pay me back.

Q What happened to the radio in which the heroin was contained?

A He gave to me.

Q Did he say why he was giving it to you?

A No, he didn't say.

Q I show you what has previously been marked Government's Exhibit 3 for identification and ask if you can identify this as the radio which you have just been telling us about.

A Yes.

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MR. KAUFMAN: The Government would offer Exhibit 3, your Honor.

MR. SOLOMON: No objection.

THE COURT: All right. Without objection, it will be received.

(Government's Exhibit 3 for identification received in evidence.)

MR. KAUFMAN: Your Honor, may we just show this to the jury?

THE COURT: Yes. We will stop for a few minutes.

(Pause)

JUROR NO. 7: Judge, I would like to ask you a question.

THE COURT: If you would, just write your question out (handing paper and pencil.)

We will of course take a recess in about a half-hour, at a quarter to four.

The Government was just about to offer an exhibit.

MR. KAUFMAN: It has already been received, your Honor.

THE COURT: Has it been received?

MR. KAUFMAN: Yes. I would just like to show it to the jury now.

THE COURT: All right. I will deal with this

after the recess.

MR. KAUFMAN: I would just like to show the jury, so the record will reflect, that this is more than a radio, that it is a radio, record player and tape recorder combined, and that the two top portions of this instrument are speakers which can be taken apart from the inside.

THE COURT: All right.

MR. KAUFMAN: As well as there being screws on the bottom of the instrument where it can be taken out from the bottom.

Your Honor, I think at this time the record should reflect that fingerprint tests were done on this radio and the report was negative. No fingerprints were found on this radio.

The instrument, I should say, was also tested for traces of heroin and no traces of heroin were found within this instrument.

MR. SOLOMON: May I ask that the report of the chemist as to that finding of no traces and no fingerprints be offered as Defendants' Exhibit A or the Government's Exhibit 4?

MR. KAUFMAN: I am willing to concede it, your Honor. If Mr. Solomon wants to offer the writings, I am willing --

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THE COURT: Do you have the writing?

MR. KAUFMAN: I have the fingerprint writing, and it will take me a moment to get the second report.

(Pause)

THE COURT: All right. You want these two pieces of paper in evidence, Mr. Solomon?

MR. SOLOMON: Your Honor, may we approach?

THE COURT: Of course.

(At the side bar.)

MR. SOLOMON: This is Exhibit what?

MR. KAUFMAN: Defendant's Exhibit B, if you are offering it.

MR. SOLOMON: I am only concerned with this part of it (indicating), "No control substance detected," signed by the laboratory director.

It shows fingerprints were taken or traces collected on the filing paper and it shows no control substance detected. I don't want any other part of it.

THE COURT: And Defendant's Exhibit A for identification is August 22, 1974 report from the Northeast Regional Laboratory. You want this in evidence?

MR. SOLOMON: Yes, your Honor.

THE COURT: And the Government has no objection?

MR. KAUFMAN: No objection. We concede it.

THE COURT: All right. Do you have any objection to Mr. Solomon's offer of this part?

MR. KAUFMAN: No objection, your Honor, but that doesn't refer to the object that was tested. There is nothing in this part that shows that the radio was tested.

MR. SOLOMON: "No control substance" --

THE COURT: Isn't it undisputed that when this radio was examined, no trace of heroin was discovered, and isn't it just better to tell that to the jury?

MR. SOLOMON: All right. This goes in and this you will tell to the jury.

THE COURT: That it is conceded that an examination --

MR. KAUFMAN: That's correct, your Honor.

THE COURT: All right.

(In open court.)

THE COURT: Members of the jury, it is conceded by the Government and counsel for Mr. Chan that when the radio was examined, no trace of heroin was discovered.

And without objection, Defendant's Exhibit A for identification is received in evidence.

x :x (Defendant's Exhibit A for identification received in evidence.)

THE COURT: And I would think, Mr. Clerk, it

might be well to mark this as Defendant's Exhibit B for identification. It is not in evidence.

xx (Defendant's Exhibit B marked for identification.)

THE COURT: Now, Miss Lai, do I understand that you had a bank account at the Manhattan Savings Bank?

THE WITNESS: I have two accounts. One is Manhattan. One is Boston.

THE COURT: No. You had a bankbook here. This was your bankbook at the Manhattan Savings Bank in New York?

THE WITNESS: Yes.

THE COURT: And when you told us a few minutes ago that you got $3,000 out of this account, is that the $3,000 that you sent to Mr. Chan?

THE WITNESS: Yes.

THE COURT: Did you go to the bank yourself and get the $3,000?

THE WITNESS: Yes.

THE COURT: Did you get it in currency?

THE WITNESS: In cash.

THE COURT: And how did you send it to Mr. Chan?

THE WITNESS: The first day I took out the money and gave to Tony Moy.

THE COURT: You gave the $3,000 to Tony Moy to

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send to Mr. Chan?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. KAUFMAN:

Q Now, Miss Lai, I believe the last thing you said in response to my question was that the defendant Chan Yuk Po left your apartment with the heroin, is that correct?

A Yes.

Q After that day, did he ever return the money to you that he owed you?

A No.

Q Did you talk to him about his returning the money to you?

A Yes. Several times.

Q And what did he say?

A He told me he had to sell that heroin before he can return the money to me.

Q Did Chan Yuk Po ask you for any more money?

A Later on he said a phone call from Hong Kong asked him for additiona , more money. I gave him about $1100.

Q Did Chan Yuk Po tell you why he needed that amount of money?

A Chan Yuk Po said he has friend from Hong Kong wants to go to South America, needs money for traveling expense.

Q And were you present when Chan Yuk Po received telephone calls from Hong Kong from his friend?

A Yes, I was present.

Q And where were these calls received?

A It was in my home.

THE COURT: Where was your home?

THE WITNESS: 40 Mulberry Street, Apartment 3-F.

THE COURT: Apartment 3-F at 40 Mulberry Street. All right.

Q And how much was it that you lent to Chan Yuk Po on this occasion?

A $1100.

Q And where did you get this amount of money from?

A This money was took then from my reserves in the home.

Q And to whom did you give the money?

A I gave this money to Tony Moy and he go to bank with Chan Yuk Po and remit bank check and both of them write in the letters and envelopes and send back to Hong Kong.

Q Did Chan Yuk Po tell you and Tony whom to send

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the money to?

A Was sent to Ling Ping Tong.

Q Is that in Hong Kong?

A Yes.

THE COURT: Miss Lai, where did you first meet this man, Chan?

THE WITNESS: In Mai Lai Wah Coffee Shop.

THE COURT: You met him in a coffee shop. When?

THE WITNESS: About four or five months ago from now.

THE COURT: He was a stranger to you?

THE WITNESS: It was introduced by a friend.

THE COURT: What I can't understand is why would you lend him large amounts of money, a perfect stranger?

THE WITNESS: It was Tony's friend. Tony asked me to lend money to him.

THE COURT: As far as you were concerned, you did it because Tony Moy asked you to do it, is that it?

THE WITNESS: Yes, exactly.

THE COURT: All right.

Q After Tony sent the $1100 to Hong Kong, did any people call for Chan Yuk Po at your apartment?

A What time?

Q After the $1100 was sent to Hong Kong, did you

receive any telephone calls in your apartment for Chan Yuk Po?

A Yes.

Q And where did these calls come from?

A Hong Kong.

Q And did you ask Chan Yuk Po about these telephone calls?

A What was your question?

Q Did you ask Chan Yuk Po about these telephone calls?

A I asked him about his call. He said this was his friend from Hong Kong, wants to import some more heroin to the United States.

I told him, "Do not use my phone for this business. It will involve me. You will not mention again."

Q Did Chan Yuk Po say how much more heroin he was going to have brought into the country?

A He told me he intends use his friends to smuggle in about fifty or sixty pounds heroin, use a suitcase, go to South America, then he will go to South America to bring into New York.

I told him, "This is not easy to pass the custom."

Q That was fifty or sixty pounds of heroin, is that right?

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A Yes.

Q And how did he say the heroin would come into the country?

A He said he would use a suitcase and special technique, use a machine to cut out the suitcase and then put inside.

Q Did he say he would use one suitcase or more than one suitcase?

A He said he would use more than one suitcase.

Q To your knowledge, did that shipment of heroin ever arrive?

A No. I have no knowledge of it.

Q After Chan Yuk Po told you about that fifty to sixty-pound shipment, were you arrested?

A Yes, I was arrested. I was arrested on July 15 , around that time.

Q Of this year?

A Yes.

Q And what were you arrested for?

A One day Tony phoned me, asked me to come -- to g down to the place where he worked, and that was about 3:00 p.m. I went to Tony's place and Chan Yuk Po comes and asks me to go to have -- drink tea in a teahouse. The name was Sun Ya Coffee Shop.

Q And did you go to have tea with Chan Yuk Po there?

A Yes.

Q And what happened there?

A He told me he was followed by secret agent. So he asked me to deliver those heroin to apartment house in Bayard Street. And he promised me, after I deliver this heroin, he would pay me back the money he borrowed from me.

Q Did he say he would give you anything else besides the money that he borrowed from you?

A He told me when he borrowed the money he would pay me some money to compensate the interest.

Q Did he say how much interest he would pay you?

A Around $1,000.

Q Did you agree to deliver the heroin for Chan Yuk Po?

A Yes.

Q What happened then?

A After I spoke to him in Sun Ya Coffee Shop, he asked me go to another coffee shop. The name was Wong Shan Wong.

Q What does that translate to?

A It translates to King of Kings.

Q Did you go to --

THE COURT: Mr. Interpreter, I think she is going too long for you to remember. So you had better ask her to stop at the end of each sentence and you give it to us sentence by sentence.

Q Did you go to King's Coffee House?

A Yes.

Q And what happened there?

MR. SOLOMON: Just a moment, please. I would like to know when this took place that she is about to testify.

THE COURT: I will permit you to cross-examine her. Let's go on.

MR. SOLOMON: I would like to know whether it is within the scope of the indictment, because he is talking about King's Coffee House. If this took place after her arrest, it is certainly not relevant or probative.

THE COURT: Is this after you were arrested?

THE INTERPRETER: No, before.

THE COURT: Is this before you were arrested?

THE INTERPRETER: Yes.

THE COURT: The interpreter says yes.

BY MR. KAUFMAN:

Q Miss Lai, are you now telling us about the event which led up to your arrest on July 16th?

A Yes. Before arrest.

Q Please tell us what happened when you went to the King's Coffee House.

A After I arrived King's Coffee Shop, Chan Yuk Po told me he don't have enough for one pound, which is the customer order, he only got eleven ounces.

He asked me to go up to 50 Bayard Street and ask the customer is eleven ounces all right for him, for the customer.

Q Before you went up to the apartment, did Tony go up to the apartment?

A Tony went up to the apartment first.

Q And why did Tony go to the apartment?

A Chan Yuk Po asked Tony go up to see if they got the money.

Q And did Tony go up?

A Yes, he went up.

Q And what happened when Tony came back from the apartment?

A Tony says they got the money all right.

Q And was it then that Chan Yuk Po asked you to go to the apartment and tell them that there was only eleven ounces?

A Yes.

Q And did you go to the apartment?

A Yes. I went to 50 Bayard Street, a big apartment house. I rang the bell and spoke to the customer over the phone and asked her to come down.

Customer came down and she asked me to go up because it was not convenient to deal in the hallway. S we both went up seventh floor.

Q Who was this person who came downstairs?

A It is a fat girl named Jean.

Q You say you went up to the seventh floor with her, is that right?

A Yes.

Q And was there anybody else in the apartment on the seventh floor?

A I didn't enter the apartment on the seventh floor.

Q Did you know whether or not anybody else was in the apartment?

A No.

Q What happened when you were up at the apartment on this occasion?

A I asked her if eleven ounces is okay, and the girl went into the apartment, asked someone, then returned, told me it is okay.

Then I go downstairs, went back to King's Coffee Shop and told Chan Yuk Po that it is all right for eleve ounces.

Q And what happened after you told Chan Yuk Po that eleven ounces was all right?

A He asked me to wait on the corner of Mulberry Street -- and I forgot the spot, it's near Mulberry Street -- asked me to wait in there for about ten minutes. Then Chun Yuk Po came with a bag of heroin.

Q Before you met Chan Yuk Po on Mulberry Street, did you ask him anything concerning the price of that heroin?

A Chan Yuk Po gave me a piece of paper written down the figures. It was about twenty thousand with some change. He asked me to collect this amount of money when I deliver the heroin.

Q Where were you when Chan Yuk Po gave you this slip of paper?

A In the front door of King's Coffee Shop.

Q Was this before you left to go to Mulberry Street to meet him?

A Yes.

Q I show you what has been marked Government's Exhibit 8 for identification.

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Is that the slip of paper that Chan Yuk Po gave you?

A Yes.

MR. KAUFMAN: The Government would offer Exhibit 8, your Honor.

THE COURT: Any objection?

MR. SOLOMON: I have to look at it, your Honor.

(Pause)

MR. SOLOMON: I object. There is no proof that this is his handwriting. It is a mere statement by the witness that he gave it to her.

THE COURT: I will admit it. She says this is the paper that he gave her.

Overruled.

(Government's Exhibit 8 for identification received in evidence.)

MR. KAUFMAN: Your Honor, may I ask the interpreter to translate the Chinese characters which here appear on this exhibit?

THE COURT: Yes.

THE INTERPRETER: The figure indicates $20,625.

MR. KAUFMAN: If I may just show this to the jur ?

THE COURT: All right. Give it to Madam Forelad and she can pass it along the front row and then back to

the second row.

All right. Let's go on.

BY MR. KAUFMAN:

Q After Chan Yu Po gave you that slip of paper, what did you do?

A I went to that spot he asked me to go to and waiting him over there.

Q On Mulberry Street?

A Corner of Mulberry Street and other street. I forgot.

Q And did you wait for him there?

A Yes. I wait there about ten minutes.

Q And what happened?

A He gave me a bag of heroin and I put in my pocketbook.

Q What kind of bag was it?

A It is a small brown paper bag which contains outgoing orders.

Q And where did you put that brown paper bag containing the heroin?

A Put in my handbag. Put in my white handbag.

Q I show you Government's Exhibit 9 for identification.

Is that the handbag in which you put the heroin?

A Yes.

MR. KAUFMAN: The Government offers Government Exhibit 9.

MR. SOLOMON: The defendant objects on the ground that this defendant had nothing to do with it.

THE COURT: Overruled. Mark it.

(Government's Exhibit 9 for identification received in evidence.)

Q Miss Lai, what did you do after Chan Yuk Po gave you the heroin?

A I went up to the seventh floor of the apartment previous I went to and I gave to Jean.

Q You gave the heroin to Jeanie. Is that the lady?

A Yes.

Q And what did she do?

A After I went up to the seventh floor, I rang the bell and Jean opened the door. I gave her white bag and she asked me to wait outside. And I waited about ten minutes.

Nothing happened and I getting frightened. I rang the bell again and she asked me to wait in the hallway. The second time I rang the bell, I waiting outside for a few minutes, then a few agents came up to arrest me.

MR. KAUFMAN: No further questions.

THE COURT: All right. Suppose we take a little recess. You may retire to the jury room for a few minutes and we will take an afternoon recess.

(The jury left the courtroom.)

THE COURT: Mr. Interpreter, tell the witness that she may be excused for a few minutes.

Mr. Solomon and Mr. Kaufman, I had the juror write down his questions. I think it is usually most prudent to do that because none of us have the slightest idea what kind of a question a juror might ask, and I don't like to take a chance on having something asked in court that we might find awkward. So he wrote it out.

I want you to look at it. He says:

"1. Was the heroin spotted by U. S. Customs?"

I don't think that is a relevant question, at least of this witness. This witness doesn't know anything about it.

And 2, he says, "It is unclear to me how the witness got the money, $3,000."

And that was the reason why I asked her these questions. I think I have covered it.

MR. SOLOMON: The other question I agree with your Honor. Whether the Customs saw it or not is not material.

THE COURT: So I think I would be prepared to say to him simply in this court: You have written out two questions. The first question I don't think is a proper question to ask this witness, and the second question I believe I have covered.

MR. SOLOMON: Yes. I agree with you. I think that is fair.

MR.KAUFMAN: I agree with it.

MR. SOLOMON: Has your Honor spoken to Judge Knapp?

THE COURT: I sent him a memo and I'll call my secretary right now.

(Recess)

THE COURT: Mr. Solomon, I have word from Judge Knapp that he has put down your sentence for 4:45 tomorrow.

MR. SOLOMON: Thank you.

THE COURT: So we will stop at 4:30.

And, Marshal, can you try to have the defendant here at 9:30 tomorrow?

THE MARSHAL: I will notify the supervisor, your Honor.

THE COURT: I know it is a problem for you people, but I like to start at 9:30, and of course we won't start without him.

Mr. Clerk, would you bring in the jury?

(Jury present.)

THE COURT: Mr. Interpreter, I would ask again that you and the witness, in speaking Chinese, keep your voices up because the defendant and his interpreter can understand Chinese. It doesn't help the rest of us --

THE INTERPRETER: All right.

THE COURT: Members of the jury, Juror No. 7 at my suggestion wrote down two questions that he had. I don't encourage jurors to ask questions but certainly there is no reason why they shouldn't. I usually ask jurors to write them down because it is better for me to see the question first rather than to have it read and it might be an awkward or an improper question.

Now, I think, Juror No. 7, your first question I believe is inappropriate to put to this witness, and the second question I think I, myself, in my questions to the witness adequately covered the point.

All right, Mr. Clerk, would you mark this note by the juror as a Court's exhibit.

(Note from Juror No. 7 marked Court's Exhibit 1.)

THE COURT: Mr. Solomon, cross-examination, please.

L A I L A I K U E N, resumed.

CROSS-EXAMINATION

BY MR. SOLOMON:

Q Miss Lai, would you please tell this honorable Court and the jury when, to your best recollection, did you first meet the defendant here on trial.

A About five months ago.

Q That would bring us back to sometime in April of 1974, is that correct?

A Between April and May.

Q At that time were you residing in the City of New York, Borough of Manhattan?

A Yes.

Q And would you please give me the address at which you were residing?

A Apartment 3-F, No. 40 Mulberry Street.

Q And were you living there with Mr. Moy?

A Yes.

Q And for how long a period of time prior to the first time you met this defendant did you leve at that address with Mr. Moy?

A I lived there more than one year.

Q With Mr. Moy?

A Yes.

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Q Now, in that period of time, did Mr. Moy bring friends to your house for dinner?

A No friends. Only relatives.

Q So that can we assume from your answer that at no time while you lived in 40 Mulberry Street was this defendant in your apartment? Was he ever a visitor there?

THE INTERPRETER: I don't understand your question.

Q During the period of time that you and Mr. Moy lived at 40 Mulberry Street, did this defendant ever come to your apartment?

MR. KAUFMAN: Your Honor, I object only because the preceding question dealt with a period prior to Miss Lai's meeting, first meeting Chan Yuk Po.

THE COURT: I will permit it.

Overruled.

Did the defendant ever come to her apartment at 40 Mulberry Street?

THE WITNESS: Yes, a few times.

Q I beg your pardon?

A A few times.

Q When was the first time that he came to 40 Mulberry Street?

A After I meeted him a few days.

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Q After what?

A After I met Chan Po.

Q I would like to know about when that was, please.

A I don't remember the month, but it was about four or five months ago.

Q At that time, when he came to your apartment the first time, did they discuss anything about narcotics?

A No.

Q Did the defendant come to 40 Mulberry Street a second time?

THE INTERPRETER: Did he come a second time?

Q She just said that the defendant came there to 40 Mulberry Street on one occasion. Now I want to know if he came there another time.

A Yes. He came up more than one time.

Q Did they ever discuss narcotics when he came the second time?

A No. He never mentioned the heroin before he come back from Hong Kong.

Q My question was a simple one. Her answer is no, is that right?

A No.

Q Now, do I understand that sometime thereafter this witness was asked by this defendant to lend him $3,00

is that right?

A The first time was $2,000.

Q When was this time about the $2,000 loan?

A After I met him, a few days.

Q You mean two days after she first met him?

A Few days. I don't remember how exactly. A few days after I met him, Tony asked me to lend him $2,000.

Q And by "Tony," she means her husband? The gentleman she is living with?

A Yes. We are not married but we live together.

Q I am not concerned whether you are married or not.

Second, when she lent him the $2,000, did she get a receipt from this defendant for the money?

A No.

Q And do I understand that he told you, meaning the defendant, that he needed the $2,000 because he owed some gambling debts?

A Yes.

Q Now, did you get any security of any kind from this defendant for this $2,000?

A No, nothing at all.

Q How much of a period of time elapsed from the period you lent him the $2,000 until the time when he asked for a loan of $3,000?

A About three weeks later.

Q About three weeks later?

A Yes.

Q Did you at that time ask him for the $2,000 that you had previously lent him?

A I did ask him.

Q She did ask him?

A Yes.

Q And, please, will you tell us what did he say when you asked him for the $2,000?

A He told me he will pay me back when he got back from Hong Kong.

Q Thereafter you sent him $3,000; there is no question about that, right?

A Yes.

Q Now, when you were talking to him about this $3,000, did he tell you what he needed the money for?

A He told me he would use $3,000 to buy Chinese medicine in Hong Kong.

Q At the time that he was talking to her about the $3,000 loan, was anything said about narcotics?

A No.

Q Now let's come to the first time you heard from him after he got to Boston.

Did you have a telephone in your home?

A Yes.

Q And am I right to assume that you gave him your telephone number?

A Yes.

Q Now, the first time you heard from him when he came back, he called you from Boston, is that right?

A Yes.

Q Can you place the approximate day or month when this took place?

A No, I cannot remember the date.

Q After you got the call from Boston, how many days went by before he came to New York and visited you?

A One or two days.

Q When he came back, do you remember what day of the week it was?

THE INTERPRETER: What do you mean came back? From Hong Kong or from Boston? From Boston or from Hong Kong?

Q From Boston. She said it was one or two days after she got a call from him from Boston that he came to her home.

I want to know whether she can recall what day or month it was.

A I cannot remember the date.

Q Now, did he meet you at 40 Mulberry Street?

A Yes.

Q Were you there when this defendant came to your home on this occasion we are talking about?

A Yes.

Q Do you recall the time of the day?

A It was afternoon.

Q Now, do I understand, young lady, referring to Exhibit 3, which is that instrument there, you say that when he came to your apartment he brought that instrument, is that correct?

A Yes.

Q Did you pick it up and handle it?

A Yes, I handled that instrument.

Q When you handled it, will you please tell his Honor and the members of this jury what you did with it, if anything?

Did she open it, did she look into it, did she plug it in, hear music, or whatever it is?

A I didn't use. I just pick up and leave it there.

Q She didn't do anything with it.

A No.

Q Now then, did he leave your home and leave the

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instrument there, Government's Exhibit 3?

A Yes.

Q Can you recall what time later in the day he returned to your apartment?

A Roughly about 4:00 p.m.

Q Were you in your apartment all the time during the period when he first came and then went out and when he came back?

A I was in the house all the time.

Q Now then, Mr. Moy came sometime later, is that correct, before 4:00 p.m.?

A Yes.

Q Did the defendant and Mr. Moy have a conversation?

A Yes.

Q In the course of that conversation, did I understand you on direct examination to say that the defendant took some packages out of Government's Exhibit 3? Did you say that?

A Yes.

Q I show you Government's Exhibit 1. Do you see that there is a brown envelope inside?

A Yes.

Q Is that what he showed you, the brown envelope inside (indicating)?

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When she said he took something out of Government's Exhibit 3 and showed it to her -- question withdrawn.

At the time he took something out of Government's Exhibit 3 and showed it to her, can she tell me whether or not it was this brown envelope that is inside Government's Exhibit 1?

A No. This brown bag was not with the heroin.

THE COURT: Because the brown bag belonged to the witness, is that correct?

THE INTERPRETER: Yes. That's her answer.

Q The brown bag belongs to you?

A Yes.

Q Did you give this brown bag to somebody?

A It was put, the heroin, in the brown bag, take away.

Q I'm not talking about the time in her apartment when the defendant is supposed to have shown her the heroin. Did anybody take the heroin from Government's Exhibit 3 and put it into this brown bag which is enclosed in Government's Exhibit 1?

THE INTERPRETER: I don't follow you.

Q All right. I'm going to try to simplify it.

We are now in 40 Mulberry Street. It is an

afternoon after four o'clock. She is there, her husband Moy is there, and the defendant is there.

Please ask her if that's right.

A Yes.

Q Now, at that time did anybody open Government's Exhibit 3, that package, that radio or whatever you call it over there, and take something out of it?

A The defendant, Mr. Chan Po, took out something.

Q Ask her if she had ever seen or used heroin before that afternoon.

THE INTERPRETER: You mean she used?

Q Whether she had ever seen or used heroin before that afternoon. I will withdraw that.

Ask her whether she had ever seen heroin prior to the time she claims that the defendant took a package out of Government's Exhibit 3.

(Pause)

Q Mr. Interpreter, what is her answer?

THE INTERPRETER: No.

Q Prior to the afternoon -- if you don't understand me, please say so and I will try it again.

Before the afternoon that this defendant is supposed to have taken something out of Government's Exhibit 3, did she know what heroin looked like?

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A It is a white powder.

Q I didn't ask you what it is. I want to know whether she knew what heroin looks like.

A I don't know.

Q She didn't know. Is that right?

A No, I wasn't engaged in this business, so I don't know how it look like.

Q I'm asking a simple question. When this package was taken out of Government's Exhibit 3, did she know what was in the package? Yes or no?

A He told me it was heroin.

Q I know that. I know what she says he told him. But I want to know did she know what heroin was before he told her anything.

A I don't understand your question.

Q Well, I will try and make it still simpler. Did she ever touch heroin prior to the afternoon that we are talking about? Is that simple enough?

A What prior? Does it mean before?

Q Prior means before.

A How long?

Q A day or two, an hour, a week, a month, a year.

A Well, I never touched that before, so I don't recognize.

Q Then on the afternoon that we are talking about, she didn't know what heroin was, is that correct?

A Yes.

Q By yes, she means she didn't know what heroin was?

THE INTERPRETER: By yes, she doesn't know heroin.

Q Okay. Did you speak to any agent on behalf of the Government who was working on this case?

A What about it?

Q I don't know. I am trying to find out.

A Regular conversation?

Q Did she speak to that gentleman sitting there? Will you identify yourself, please? Did she ever speak to this gentleman?

A About what? Anything?

Q I will come to that later. Did she ever -- would you please identify yourself for the record?

MR. GREENAN: James Greenan.

MR. SOLOMON: Narcotic agent?

MR. GREENAN: Yes, sir.

Q Would you look at this gentleman? Did you ever talk to him?

A He asked me many questions when I was arrested. Of course I spoke to him before.

Q When you were arrested, did you have a lawyer?

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MR. KAUFMAN: Objection, your Honor.

THE COURT: I will permit it.

MR. SOLOMON: I will withdraw the question, your Honor.

THE COURT: All right.

Q Now then, do I understand you to say that this defendant told you the package that you say he took from Government's Exhibit 3 was heroin, is that right?

A Yes.

Q Did you examine the package?

A No.

Q Then of your own knowledge, you did not know what was in that package, is that right?

A That's right.

Q Now you say this defendant owes you -- three and two is five and eleven -- $6100, is that right?

A Yes.

Q Did you give him the $1100 after the $3,000?

A Yes.

Q And when you gave him the $1100, he owed you $5,000, as you say, is that right?

A Yes.

Q And you never got a receipt from him for any of the money, is that right?

A No.

Q And he never paid it back to you.

A No.

Q Aren't you angry at him for not paying back the money that you lent him?

THE INTERPRETER: Pardon me?

Q Isn't she mad or angry at him because he didn't pay back the $6,100 that she lent him?

A Of course.

Q I beg your pardon?

A Of course, yes.

MR. SOLOMON: Thank you. That's all.

THE COURT: All right. Mr. Kaufman?

MR. KAUFMAN: May I have a moment, your Honor?

(Pause)

MR. SOLOMON: I'm sorry. Your Honor knows I got up at six in the morning and I'm tired and it is a quarter to five, and may we take a recess now.

THE COURT: I thought we could finish with this witness. Let's finish with the witness.

MR. KAUFMAN: I have no redirect, your Honor.

THE COURT: All right. Then the witness may be excused and I can excuse the jury.

(Witness excused.)

***

ms

UNITED STATES OF AMERICA

vs. 74 Cr. 792

CHAN YUK PO, et al.

New York, September 10, 1974;
10.00 o'clock a. m.

(Trial resumed.)

- -

(Jury in box.)

THE COURT: Good morning, members of the jury.

I am disappointed that we were not able to start promptly this morning. I hope there are good reasons.

The Government may proceed.

MR. KAUFMAN: The Government calls Tony Moy.

- -

T O N Y M O Y , called as a witness by the Government, being first duly sworn, testified as follows:

(The testimony of the witness was given through the official interpreter, Chung Lo.)

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Moy, how old are you?

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A 41.

Q Where were you born?

A China.

Q What year did you come to this country?

A 1952?

Q Are you an American citizen?

A Yes.

Q Are you Tony Moy who is named as a defendant in this indictment?

A Yes.

Q Have you pleaded guilty to Count 1f of this two-count indictment?

A Yes.

Q Count 1 charging you with conspiracy to violate the Federal narcotics laws?

A Yes.

Q Have you been sentenced as yet by your plea of guilty?

A No.

Q Have any promises been made to you in connection with your plea of guilty and your testifying here for the Government?

A No.

Q Are you aware that the Government will inform

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the judge prior to the date of your sentence as to the extent of your cooperation?

MR. SOLOMON: The question need not be asked. I will stipulate to that.

THE COURT: All right.

Do you know a man by the name of Chan Yuk Po?

A Yes.

Q Do you see him here in the courtroom?

A Yes.

Q Will you please point him out?

A (The witness point to the defendant Chan Yuk Po.)

Q Tell us where he is sitting?

A In the middle of the table.

MR. SOLOMON: Conceded.

THE COURT: The record may show that the identification was made and conceded.

Q Do you know Chank Yuk Po by any other name?

A No.

Q When did you first meet Chan Yuk Po?

A In a coffee shop in Golden Gate.

Q When was that?

A A few months ago.

Q Is that the Golden Gate coffee house here in

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Manhattan?

A Yes.

Q How did you happen to met Chan Yuk Po?

A He came from Boston. He was introduced by my friend.

Q Did you see Chank Yuk Po again after the time you first met him at the coffee house?

A Yes.

Q About how long after you first met him did you see him again?

A A few days.

Q Where did You meet him on this occasion?

A In the coffee shop, the Mai Lai Coffee Shop.

Q Was anybody else with you on that occasion?

A My wife Lai Lai Kuen.

Q Is that the Lai Lai Kuen who is named as a defendant in this indictment?

A Yes.

Q What is your relationship with her?

A We live together.

Q Did you have a conversation with Chan Yuk Po at the Mai Lai?

A Yes, sir.

Q Will you tell us what that conversation was?

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Did you have a conversation with Chan Yuk Po at he Mai Lai?

A Yes.

Q Tell us what that conversation was?

A I talked with him in the Mai Lai Coffee Shop. He lost money in gambling. He wants to borrow $200 from Lai Lai Kuen. Lai Lai Kuen promise and gave money to him to pay back the debt. And he also mentioned about going back to Hong Kong. He wants to borrow $3000. He said he would buy some Chinese medicine. When he returned he will return the money.

Q Did this all occur in the same conversation in the Mai Lai the second time you met Chan Yuk Po?

A Some at that time, some later.

Q Just tell us the conversation you had with Chan Yuk Po that first time you met him in the Mai Lai?

A He was asking about $3000 and Lai Lai Kuen said she did not have the money.

Q Mr. Moy, we're talking about the second time you ever met Chan Yuk Po?

A Yes.

Q That was at the Mai Lai?

A Yes.

Q Now, what conversation did you have with him on

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that occasion, just on that occasion?

A That's all I talked.

Q Did he ask about $2000 or $3000?

A $2000.

Q Why did he say he needed $2000?

A He said he lost money in gambling in the basement.

THE COURT: Are you related to Chan?

THE WITNESS: No.

THE COURT: Is Lai Lai related to him?

THE WITNESS: No.

THE COURT: Why would you or she be willing to lend a stranger $2000?

THE WITNESS: He talked over and mentioned about doing business in Hong Kong, that he will pay back when he returns from Hong Kong.

MR. SOLOMON: I move to strike.

THE COURT: I will let it go. You may cross-examine later.

Q What did you respond to Chan Yuk Po when he asked you for $2000?

A He told me the whole story. Then I talked to Lai Lai Kuen. I didn't lend him the money on that date, but a few days later.

Q Well, did you have $2000 to lend to Chan Yuk Po?

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A No.

Q Whom did you ask to lend the money to Chan yuk Po?

A I asked Lai Lai Kuen.

Q Did Lai Lai Kuen agree to lend Chan Yuk Po $2000?

A Yes.

Q Did there come a time when Chan Yuk Po asked for more money?

A Yes.

Q How long after Lai Lai Kuen loaned Chan Yuk Po the $2000 did Chan Yuk Po ask for more money?

A About a week.

Q How much money did Chan Yuk Po ask for?

A $3000.

Q Why did Chan Yuk Po say he needed this money?

A He said he is going back to Hong Kong and buy some Chinese medicine to business with it.

Q Did you ask him what he meant by Chinese medicine?

A He just mentioned Chinese medicine.

Q Did you lend Chan Yuk Po $3000?

A No.

Q Do you know if Chan Yuk Po asked Lai Lai Kuen for $3000?

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A Yes.

Q Did he ask her?

A Yes, we were all together.

Q Did Lai Lai give Chan Yuk Po $3000 before he went to Hong Kong?

A No.

Q Did there come a time when Chan Yuk Po did go to Hong Kong?

A Yes.

Q Did you hear from him when he was in Hong Kong?

A Yes, I received two letters from him and asked about the money, and also a telephone call from Hong Kong.

Q What did Chan Yuk Po say in the telephone call?

A He said he purchased Chinese medicine and needed $3000 to pay for it.

Q Did Lai Lai Kuen then agree to send $3000 to Hong Kong to chank Yuk Po?

A Yes.

Q Do you know whether or not $3000 was sent to Chan Yuk Po?

A Yes, Lai Lai Kuen gave it to me and I sent it by cable.

Q Lai Lai Kuen gave you $3000?

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A Yes.

Q What did you do with the 3000?

A Lai Lai Kuen withdrew $3000 from the Manhattan Savings Bank and the next day I sent it by wire through the Chase Manhattan Bank to Hong Kong.

MR. KAUFMAN: At this time the Government would offer Government's Exhibit 10 for identification, which are photocopies from the Chase Manhattan Bank issued in the regular course of business.

THE COURT: Have you see them?

MR. SOLOMON: I saw them this morning.

THE COURT: Any objection?

MR. SOLOMON: No, sir.

(Government's Exhibit 10 was received in evidence.)

xx MR. KAUFMAN: If I may read just part of it to the jury.

THE COURT: Yes.

(Mr. Kaufman reads from Government's Exhibit 10 to the jury.)

Q Mr. Moy, do you know if Chan Yuk Po received the $3000?

MR. SOLOMON: We conceded that yesterday.

THE COURT: It is conceded.

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Q Did there come a time when Chan Yuk Po returned from Hong Kong?

A Yes.

Q How did you first hear from him?

A He phoned me.

Q Do you know where he called from?

A From Boston.

Q Do you know if he lived in Boston?

A I don't know where he lives, but the phone call came from Boston.

Q Do you know whether it came from a private phone or a pay phone?

A I don't know.

Q What did Chan Yuk Po say when he called you?

A He said he arrived safely and would be seeking me in a few days.

Q Did you see Chan Yuk Po in a few days?

A Yes.

Q Where did you see him?

A In my apartment.

Q Tell us what happened on that day?

A Before I got off to work he brought a radio to my apartment. When I returned home, he opened up the radio. When he opened up the radio he took out some

white power?

Q What do you mean when you say white powder?

A It is heroin.

Q When you first saw the radio before Chan Yuk Po pened it up did you ask him about it?

A I asked him, "What about the radio?"

Q And what did he say?

A He said, "When I opened it up you will know."

Q How did Chan Yuk Po open the radio?

A He used a screwdriver to open it.

Q When uou saw the substance inside, did you ask him what it was?

A Yes, I asked.

Q What did he say?

A He said it is white powder and it means heroin?

Q Did he tell you how much the heroin was worth?

A He said it cost about 20 or 30,000 dollars.

Q Did he ask you to help him sell the heroin?

A Yes.

Q Did you agree to help him?

A Yes, I will find some friends.

Q How was the heroin packed inside the radio?

A I saw blue envelopes and white envelopes all mixed together, blue tape and white tapes and sticking

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together.

Q Was it packed the way the packates are inside of Government's Exhibit 1?

A Yes, and outside have some tape.

Q Is this the tape, this blue tape you are referring to?

A Yes.

Q What Chan Yuk Po do with the heroin after he showed it to you inside the radio?

A He use a paper container, paper bag and took it away.

Q What did he do with the paper bag?

A He went away.

Q Was the heroin inside the paper bag?

A Yes.

Q What did Chan Yuk Po do with the radio?

A He said he would give it to us.

Q A gift?

A Yes.

Q I show you Government's Exhibit 3 in evidence. Is this the radio which Chan Yuk Po brought to your apartment and which contained the heroin?

A Yes.

Q Did you see Chan Yuk Po a day or two after this

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occasion?

A Yes.

Q Where did you meet him?

A He came up to my apartment. We ate together.

Q Why did You meet with him on this occasion?

A He come up to discuss about the selling of the drug.

Q Did you ask him about the return of the money he had borrowed?

A Yes.

Q What did he say?

A He said he have to wait until he sold the drugs.

Q Did he tell you anything else about any other drugs?

A Yes.

Q What did he tell you?

A He said he needs about $1100 to send it back to Hong Kong.

Q What was the $1100 for?

A He said he have a friend wants to go Colombia, South America.

Q Why did the friend in Hong Kong want to go to South America?

A He also tried to use a radio smuggling the drugs

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to South America.

Q Did Chan Yuk Po say anything else about any more heroin?

A Yes.

Q What else did he say?

A He said there will be three people go over there.

Q Go over there?

A South America.

Q What would those three people be going to South America for?

A Those three people will carry heroin to smuggle in to South America.

Q Did he say how much heroin?

A Around 50 or 60 pounds.

Q What did Chan Yuk Po say he would do after the 50 or 60 pounds were in South America?

A He said he will make three special suitcases and to put those heroin in the suitcase and they will carry it back here. He will make those three friends as transi tourists so they can stay in New York for one week. and he will exchange those suitcases and smuggle in the heroin in New York City, and this plan was not successful because of the arrest.

Q Did Chan Yuk Po ask you to help him in any way

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with these plans?

A No.

Q Well, did there come a time when Chan Yuk Po asked you and Lai Lai for $1100 that he previously mentioned?

A Yes.

Q Why did he say he needed the $1100?

A To purchase heroin to send it to South America.

Q This was for the shipment of heroin that was going to come in again in a radio that was going to precede the 50 to 60-pound shipment? Is that right?

A Yes.

Q Did Lai Lai Kuen give Chan Yuk Po $1100?

A Yes.

Q How do you know that?

A Lai Lai Kuen gave me the cash and I went to the bank and purchased a check to send out.

Q By check, you mean a money order?

A Yes.

Q How many money orders did you purchase?

A Three money orders, two $500 and one $100.

Q I show you what has been marked Government's Exhibit 7 for identification and ask you if you can identify that as the copies of the three money orders?

A Yes, sir.

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MR. KAUFMAN: The Government would offer Exhibi 7

MR. SOLOMON: I object, your Honor.

THE COURT: Overruled.

(Government's Exhibit 7 was received in evidence.)

Q Mr. Moy, these three money orders which total $1100 are signed by Chan Po, or, at least, the signature Chan Po appears on the money orders.

Who signed that name?

A I did.

Q At whose instructions did you sign Chan Po's name?

A His.

Q Who?

A Chan Po.

Q And these mo ney orders are addressed to a person named Leong Bing Hong.

Who told you to make the money orders payable to that individual?

A Chan Po.

MR. KAUFMAN: If I may circulate Exhibit 7, your Honor.

THE COURT: Give them to Madam Foreman.

Q Mr. Moy, did You send these money orders by

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registered mail?

A Yes.

Q Did you receive a receipt for that?

A Yes.

Q I show you Government's Exhibit 7-A for identification and ask if you can identify that as the receipt?

A Yes.

MR. KAUFMAN: The Government offers Exhbits 7-A.

MR. SOLOMON: Objection.

THE COURT: Mark it, Mr. Clerk.

(Government's Exhibit 7-A was received in evidence.)

xx Q Did Chan Yuk Po tell you why he wanted you to sign his name?

A He wrote a letter and ask me to sign the check.

Q Did he say why he wanted you to use Chan Yuk Po s name?

A Yes, because if I sign my name his friend will not recognize me.

Q During the month of July did you try to find a customer for the heroin that Chan Yuk Po had already brought in in that radio?

A Yes.

Q Did you find a customer?

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A Yes.

Q Who was that customer?

A The name, the lady's name, Jeanie Lee.

Q Can you describe this woman, please?

A She is a very fat lady.

Q Let me go back a minute, Mr. Moy. I'm interrupting the sequence.

You have testified that Lai Lai Kuen loaned a total of $6100 to Chan Yuk-Po?

A Yes.

Q Do you know originally where Lai Lai Kuen got this money?

A This money was given by her former husband and using this money to tour around the world.

Q Was she divorced from her prior husband?

A Yes.

Q Was this her husband in Thailand?

A Yes.

Q Was this money she received as a result of that divorce?

A Yes.

Q Now, going back to the customer, Jeanie Lee, how much heroin did you tell Jeanie Lee that you had to sell?

A One pound.

Q And what price did you tell Jeanie Lee the one pound of heroin would cost?

A $25,000.

Q Is that correct?

A And Jeanie Lee wants to $5000. The total price is $30,000.

Q Did you arrange with Jeanie Lee to sell the heroin on a particular day?

A Yes.

Q What day was that?

A The day of the arrest.

Q Was that July 16, 1974?

A Yes.

Q Did you meet with Chan Yuk Po on that day?

A Yes.

Q Where did you meet with him?

A In a coffee shop.

A Did he ask you to do anything?

A He asked me to make sure the buyer has the money. He wants me to go up and check the money.

Q Where did he want you to go?

A Apartment 70 at 50 Bayard Street

Q Is that in Chinatown?

A Yes.

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Q Did you go to that apartment on 50 Bayard Street?

A Yes.

Q What did you do there?

A I went up there and checked the money.

Q Tell us exactly what you did?

A I went upstairs and Jeanie Lee opened the door a little bit. I saw a man sitting in the sofa.

Q Do you now know who that man is?

A Before I didn't know it, but I now I know.

Q Now do you know who that person is?

A He was the agent.

Q What happened when You knocked on the door and Jeanie Lee opened the door?

A When she opened the door the American man showed me the money.

Q Did you come in the apartment?

A No.

Q What did You do after you saw the money nd left the apartment?

A When I left the apartment I went to the coffee shop and told Chan Yuk Po the money was real.

Q Was real?

A Real.

Q What was the name of the coffee shop that you went to?

A King's coffee shop.

Q Was Lai Lai Kuen present there at the King's coffee shop?

A Yes.

Q After you told Chan Yuk Po that the money was in the apartment what happened?

A I remained in the coffee shop and Chan Po and Lai Lai went up to the apartment.

Q Before that happened did Chan Yuk Po have a conversation with Lai Lai Kuen?

A Yes, we have a conversation discussing about the heroin was only 11 ounces, instead of one pound, so Chan Po asked Lai Lai Kuen to go up again to tell the customer we only have 11 ounces. See whether the custome will accept it or not.

Q Did Lai Lai Kuen go to the apartment?

A Yes, she did.

Q Did she come back to the coffee shop?

A Yes.

Q And what did she say?

A She said the customer wants the 11 ounces.

Q Was there then a conversation about how much the

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11 ounces should be priced? What the price of the 11 ounces should be?

A And after figuring in the coffee shop Can Yuk Po gave a price to Lai Lai Kuen.

Q How did he give her the price?

A He wrote it on a piece of paper.

Q Did he give it to Lai Lai Kuen?

A Yes.

Q Where did that happen?

A In the coffee shop.

Q What happened after that?

A Both of them went out to pick up the stuff and make the delivery. Lai Lai Kuen asked me to wait for her in the 60 Bayard Street lobby, in the lobby of 50 Bayard Street.

Q And did you wait for her in the lobby of 50 Bayard Street?

A Yes.

Q What happened there?

A They make delivery to the customer.

Q What happened to you?

A I was waiting in the lobby.

Q Were you arrested there?

A Yes, I was arrested.

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MR. KAUFMAN: No further questions, your Honor.

THE COURT: All right, Mr. Solomon.

CROSS EXAMINATION

BY MR. SOLOMON:

Q Mr. Moy, prior to the time that you first saw the radio had you ever seen heroin?

A No.

Q Prior to that time you didn't know what heroin looked like? Is that right?

A No.

Q You at no time were asked in any way whatsoever in dealing in heroin?

A Not interested.

Q Now, is it true according to your testimony that the first time you ever saw heroin was when you saw the defendant showed you a package in your house and the radio, which he took out of the radio which is in evidence in this case?

A I don't understand.

Q Do you see this radio, Government's Exhibit 3?

A Yes.

Q You said that Government's Exhibit 3 was brought to your house? Is that true?

A Yes.

Q And you say it was brought by Po?

A Yes.

Q Now, at that time when he brought the radio you had never looked at or seen or handled heroin?

A No.

Q And prior to that time you had never done any business of any kind with the defendant Po? Is that so?

A No.

Q I show you Government's Exhibit 1. Do you see there are certain bags or packets inside Government's Exhibit 1? Do you see it?

A Yes.

Q Now, you say you saw that or something like it?

A Yes, I saw something like that.

Q And when you saw that or something like it you didn't know what it was?

A He told me that.

Q At the time that the defendant showed you what is in Government's Exhibit 1, the package, you didn't know what was in those packets?

A Yes.

Q Now, do you say that he then told you it was heroin?

A Yes.

Q Then you knew what was in the package?

A Yes.

Q And you knew that heroin was against the law?

A Yes.

Q Didn't you tell him, "Take the heroin and get the hell out of here? Yes or no.

A Yes.

Q You told him that?

A Yes, I told him to take it away, don't put it in my house.

Q Now, then, when he came to you on the second occasion and asked you to see if you could get somebody for the sale of the heroin, did you tell him to go to hell? I would like an answer to my question yes or no.

A Yes, because he owe me money.

Q I didn't ask you that.

THE COURT: What did you tell him when he asked you to find a buyer for the heroin?

THE WITNESS: I told him I would try to find a buyer.

Q But you knew it was against the law to deal in heroin, didn't you?

A Yes.

Q Now, when he left your apartment and you saw that

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he brought what he said was heroin in Government's Exhibit 3, didn't you tell him to take this radio, Government's Exhibit 3, with him?

A Because he said he would give the radio to me.

Q You were arrested on July 16 of 1974? Is that right?

A Yes.

Q When was the first time that you made any statement to the Government agents about this case?

A What kind of statement?

Q Any kind? "Get me a ticket for a show." "I want to dance with a girl." "I want to have a drink "

MR. KAUFMAN: Objection.

A I don't know what kind of statement you mean.

Q You were testifying here this morning. Did you ever tell anybody from the Government agency what you are telling us here now, or things similar to that?

A I didn't make any statement, except questions asked by the agent.

THE COURT: He sayd he didn't make statements, but answered questions by an agent.

Q Now, when was the first time if you recall specifically the date that that took place?

A The same day.

Q The same day?

A The same day I was arrested.

Q Did you tell them that Po brought it in? Did you tell them that Po brought in the narcotics?

A No.

Q When was the first time, the date, that you told the Government agent that Po brought in these narcotics?

A Two days later.

Q A few days later?

A Two.

Q Now, before you did that, do you know when your wife spoke to the agents for the first time?

A I don't know.

Q Did the agent ask you questions on July 16 when you were arrested?

A Yes. He asked me questions, but not many questions.

Q He asked you some questions? Do I understand correctly that on the day you were arrested you didn't tell anybody that the narcotics was brought in by Po? Is that correct?

A Yes.

Q The answer is yes, you didn't tell him?

A Yes, I didn't tell him.

Q But later on, on a later occasion, after you had some conferences with the Government agents, did you tell the story you told today?

MR. KAUFMAN: I object to it. That assumes something.

MR. SOLOMON: There is no implication.

THE COURT: I sustain the objection as to form.

MR. SOLOMON: Mr. Kaufman, I don't make any implications.

THE COURT: Let's go on. Put a question.

Q Mr. Witness, before you made the statement, the statements to which you testified here this morning, you had conversations with certain agents, didn't you?

A No.

Q You didn't talk to any agents?

A What kind of conversation?

Q Talk - t-a-l-k - just plain talk?

A A regular conversation.

Q And then you had some conversation with them, you began to talk about where the narcotics came from? Is that right?

A No.

Q You never talked about where the narcotics came from to the agent?

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A No.

Q Are you sure about that?

A I'm sure.

MR. SOLOMON: That is all of this witness.

REDIRECT EXAMINATION

XX BY MR. KAUFMAN:

Q Did there come a time when you told the agents about Chan Yuk Po?

MR. SOLOMON: I object to the Government trying to bolster the witness now.

THE COURT: I will permit it.

Overruled.

MR. SOLOMON: I am going to ask the prosecutor now to put a concession on the record on a certain date this witness did make statements to the narcotic agents subsequent to the time he had conversations with them. He said he made no statement. I would like that concession.

MR. KAUFMAN: The concession the Government would make is the first time that Tony Moy was interviewed by the agents he did not mention Chan Yuk Po, but thereafter he did.

MR. SOLOMON: I want the dates.

THE COURT: We will get them.

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MR. SOLOMON: If you are going to ask the witness these questions we will be here a week. I will take Mr. Kaufman's statement as to the date.

How do you want to do it, Mr. Kaufman?

MR. KAUFMAN: The dates would be July 16, on the day of the arrest, he did not mention Chan Yuk Po. On July 17 he did not, as well.

On the 18th, at a preliminary interview he did mention Chan Yuk Po. And on July 25 at a complete interview he did mention Chank Yuk Po.

MR. SOLOMON: Thank you very much.

THE COURT: That suits you?

MR. SOLOMON: Yes.

THE COURT: Do you need anything more?

MR. KAUFMAN: Nothing more.

THE COURT: Do you need the witness any more?

MR. SOLOMON: No.

(Witness excused.)

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JAMES GREENAN, called as a witness by the Government, being first duly sworn, testified as follows:

MR. KAUFMAN: I think Mr. Chung wants to be excused now. I think he can be.

(The interpreter Chung Lo leaves the courtroom.)

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Greenan, by whom are you employed?

A By the United States Justice Department, Drug Enforcement Administration.

Q How long have you been in the Drug Enforcement Administration?

A Approximately one year.

Q Prior to your being with the Drug Enforcement Administration by whom were you employed?

A I was a special agent for the Department of the Treasury, United States Customs Service.

Q Have you been involved in the investigation of this case here on trial?

A That is correct.

Q In that connection did you participate in the apprehension, the taking into custody and the eventual

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interviews of the defendants Lai Lai Kuen and Tony Moy?

A That is correct.

Q After Tony Moy and Lai Lai Kuen were arrested on July 16 where were they taken?

A They were taken to our office to be processed. That is located at 57th Street and 11th Avenue.

Q Were they interviewed on that occasion?

A What we call a pedigree was taken from them, their name, address, date of birth, personal history.

Q Did you have a Chinese interpreter available?

A No.

Q How were you able to get this pedigree information?

A Most of it was through Tony Moy.

Q He knows English?

A Very limited.

Q After they were processed at your headquarters where were they taken?

A During the course of the evening we attempted to elicit their cooperation and they expressed a desire to cooperate, but not without speaking to a lawyer first. So instead of taking Lai Lai Kuen to Rikers Island and Tony Moy to West Street we put them up in a hotel.

Q When you put them up in a hotel were they in the

custody of the agents?

A Yes.

Q Did they call a lawyer?

A Yes, Tony Moy did.

Q Did they speak to that lawyer?

A They spoke to him the next morning in the office of United States Attorney Batchelder.

Q Was there any agreement between the United States Attorney's office and Tony Moy and Lai Lai Kuen and their lawyer about their making a statement?

MR. SOLOMON: I object to the word "agreement." It is too indefinite.

THE COURT: I will sustain the object as to form. You can ask him what was said.

Q Was there any conversation in the offices of the United States Attorney when Moy and Kuen were brought down?

A Through their lawyer, Mr. Gerber, they expressed a desire to cooperate with the Government and make a statement. Their lawyer agreed to postpone their arraignment, and they were to remain in the custody of the agents while the statement was taken.

Q We're talking about July 17?

A That is correct.

Q And on July 17 was a full and complete statement

taken from the defendant Lai Lai Kuen?

A We attempted to. We solicited the cooperation of a court interpreter. Her name was Shirley Moy. The statement was taken by shorthand by a Drug Enforcement Administration secretary. Part of her statement took the rest of the 17th.

Q And in that statement did she fully state that Chan Yuk Po was the source of the heroin that she delivered to the agent the day before?

A That is correct.

Q Were you able to fully interview Tony Moy on July 17?

A We had two rooms at the hotel. They were kept in separate rooms during the interview. Tony Moy was not allowed in the same room that Lai Lai was in while she was being interviewed.

Q Was Tony Moy fully interviewed on July 17?

A No, he was not.

Q Why not?

A Because we had only one interpreter and Lai Lai's statement was taking quite a long time.

Q Was Tony Moy interviewed on the next day, July 18?

A That is correct.

Q Was that a preliminary interview?

A That is correct.

Q And on that occasion did he mention Chan Yuk Po?

A That is correct.

Q In what context did he mention Chan Yuk Po?

A He stated that Mr. Po was the source of the heroin.

Q Did he more fully elaborate on that on July 25 when he gave a more formal statement?

A That is correct.

Q Agent Greenan, as a former Customs agent are you familiar with passports and visas and re-entry permits?

A Yes, I am.

Q I show you what has been marked Government's Exhibit 2 in evidence, which is the re-entry permit of th defendant Chan Yuk Po.

I direct your attention to page 4 of this permit where there is a stamp which says U. S. Immigration 170 HHW 1635, and then the date June 7, 1974.

Can you tell us what those three letters HHW stand for?

A HHW is the symbol the International Arrivals Building which is located in Honolulu.

Q Does that stamp mean that Chan Yuk Po, the

holder of this re-entry permit entered at Honolulu, Hawaii, on June 7, 1974?

A That is correct.

Q Directing your attention to page 5, is there a stamp there from Hong Kong?

A That is correct.

Q What does that stamp indicate?

A That he landed in Hong Kong on May 13, 1974.

Q Directing your attention to page 6, is there a stamp here which indicates the day he departed Hong Kong?

A That is correct, on June 7, 1974.

Q The same date he landed In Honolulu, Hawaii?

A That is correct.

MR. KAUFMAN: May I circulate this among the jury?

(Government's exhibit in evidence given to the jury.)

Q Agent Greenan, when a person comes into this country bringing with him property from a foreign country does he have to do anything with respect to Customs?

A He must declare on a formal Customs declaration any purchases that he may have brought.

Q When he brings this property through the International Arrivals Building, as a matter of course is all

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his property examined for contraband?

MR. SOLOMON: That's not a fair question because in my six last trips on two occasions everything I had was examined, and for a dozen people they don't. I don't think it is a regular custom.

MR. KAUFMAN: I objection to Mr. Solomon's testimony.

THE COURT: What is the question?

MR. KAUFMAN: The question is as a regular course in all property brought in through Immigration by people arriving in this country actually examined by Customs Inspectors?

THE COURT: You mean is there a regulation?

MR. KAUFMAN: I'm asking Agent Greenan as a former employee of Customs is that the practice.

THE COURT: I will sustain the objection.

Let's go on.

(Government's Exhibit 4 was marked for identification.)

MR. SOLOMON: Is that the entry declaration?

MR. KAUFMAN: Yes.

MR. SOLOMON: No objection.

(Government's Exhibit 4 was received in evidence.)

THE COURT: Mr. Greenan, statements were taken I think you said, from Lai Lai and also from Tony Moy?

THE WITNESS: That is correct.

THE COURT: Now, from the time that they were arrested until the completion of those statements were they allowed to be alone together?

THE WITNESS: Yes, they were.

THE COURT: They were?

THE WITNESS: Yes.

MR. KAUFMAN: At this time I would like to read from Government's Exhibit 4 in evidence.

THE COURT: All right.

(Mr. Kaufman reads from Government's Exhibit 4 in evidence to the jury.)

MR. KAUFMAN: If I may refer to Government's Exhibit 2, the visa, the back of the visa as a receipt from United States Customs, Honolulu Airport, in the amount of $3.30.

Your Honor, may I circulate Government's Exhibit 4 in evidence?

THE COURT: Yes.

(Government's Exhibit 4 given to the jury.)

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CROSS EXAMINATION

BY MR. SOLOMON:

Q Do I understand that on the 15th of July, 1974 you arrested the two defendants who pled guilty in this case?

A I did not personally arrest them. I participated in the arrest.

Q When you say you participated, you mean there were other agents who made the arrest?

A Yes.

Q What time in the afternoon was it when you arrested the female defendant?

A I did not arrest the female defendant, but I am aware of the fact that she was arrested.

Q I can't hear you.

A I did not arrest the female defendant, but I am aware of the fact that she was arrested late in the afternoon of July 16, 1974.

Q You did not participate in that arrest?

A No, I did not.

Q Did you participate in the male arrest?

A The arrest of Tony Moy?

Q Yes.

A No, I did not.

Q What time did you first see them that afternoon after they were apprehended?

A I saw Lai Lai immediately after her arrest. I was in Apartment 70 on Bayard Street.

Q What time?

A I saw her almost immediately after her arrest.

Q What time was that?

A Between five, some time after 5.30.

Q Did you or some brother officers take them ot your office on 57th Street?

A I transported Lai Lai Kuen to 57th Street.

Q What time did you arrive at 57th Street?

A Around 6 p.m.

Q Sunsequently what did you do with them?

A We subsequently transported them to a hotel.

Q What hotel?

A The Skyline Motel.

Q Did you pick them up the next morning, that would be the 17th?

A I met them down at United States Attorney Batchelder's office.

Q Did you pick them up on the 17th of July?

A No, I did not.

Q Did you meet them in the United States Attorney's

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office in this building on July 17?

A Yes.

Q Were they arraigned before a Magistrate?

A They were not arraigned.

Q When were they arraigned?

A They were arraigned on the 18th late in the afternoon.

Q What happened on the night of the 17th?

A On the night of the 17th we took a formal statement.

Q Where were they lodged?

A At the Skyline Motel.

Q The same as on the previous evening?

A That is correct.

MR. SOLOMON: Thank you very much.

MR. KAUFMAN: No redirect.

(Witness excused.

MR. KAUFMAN: The Government calls Jeffery Weber.

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J E F F E R Y W E B E R , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Weber, by whom are you employed?

A I am employed by the Drug Enforcement Administration.

Q In what capacity?

A As a forensic chemist.

Q How long have you been a forensic chemist with the Drug Enforcement Administration?

A A little more than four years.

Q What is your training as a chemist?

A I have a Bachelor of Science degree in chemistry from the College of the City of New York; I have a Master's degree in chemistry from Brooklyn College, and I participated in a six months' training program with the Bureau of Narcotics & Dangerous Drugs.

Q I show you Government's Exhibit 3 in evidence. Are you familiar with this radio-record player phonograph?

A Yes, I am.

Q Does your name appear on the evidence tag?

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A Yes, it does.

Q Did you examine Government's Exhibit 3?

A Yes, I did.

Q Did you run tests on it?

A I took the radio recorder apart and looked for traces of controlled substances on the inside.

Q The result of that test was negative? Is that correct?

A That is correct. I didn't find any controlled substances in the radio.

Q Mr. Weber, it has been stipulated that you examined and analyzed Government's Exhibit 1 in evidence and that you determined Government's Exhibit 1 to be heroin.

Mr. Weber, if the clear packages which are contained in Government's Exhibit 1 were contained in the radio in your expert opinion do you believe that you would find traces of heroin within the radio?

MR. SOLOMON: Your Honor, I object on the grounds no proper foundation has been laid for any such testimony.

THE COURT: He is a chemist.

MR. SOLOMON: He is a chemist, but did he ever take packages and put them in any object to see whether it would leave a trace or not?

That is the test, your Honor.

THE COURT: I am going to permit the question. I will permit you to cross-examine him on his qualifications. You can argue to the jury as to what weight they should give it, if any.

Q Can you tell us what your expert opinion would be?

A In my opinion I don't think you would find anything in the radio because, first of all, in the state that you would get it from Asia in pellets it is not ground up to powder, so if there was leakage there would not be any powder found, since they are pellets, you would have to find a whole pellet.

Second, they are in completely sealed plastic bags, which were further sealed in another sealed plastic bag.

Q Did you also check Government's Exhibit 3 for the presence of identifiable fingerprints?

A Yes, I did.

Q Am I correct in saying that your report on that subject was negative as well?

A That is correct.

Q Now, when you say that there were no fingerprints found, does that mean that nothing was found on the radio?

A No, it does not mean nothing was found.

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Q What was found on the radio?

A Smudges that could not be identified as fingerprints or palm prints.

Q So when your report says no fingerprints were found, am I correct in stating that no one's identifiable fingerprints were found?

A That is correct.

MR. KAUFMAN: I have no further questions.

CROSS EXAMINATION

XX BY MR. SOLOMON:

Q Mr. Weber, you see Government's Exhibit 3. You were instructed to examine it for what purpose?

A For traces of controlled substances.

Q Now, at the time you examined it were you told what someone believed had been contained in Government's Exhibit 3?

A Yes, I was.

Q Were you told that each package that is in Government's Exhibit 1 came from Government's Exhibit 3?

A No, not at the time I received the radio.

Q When you received the radio you were not told that?

A I was told that I should look for controlled substances, mostly likely heroin, and I vacuumed out the

radio. I took the radio apart, vacuumed out the speaker sections and vacuumed out under here.

Q How many packets did you examine?

A I examined a portion from every one of the 22 packets.

Q Did you examine each of those packets for fingerprints?

A No, it's very hard.

Q I didn't ask you that.

A No, I did not.

Q Was this envelope given to you?

A Yes, everything in there was examined by me.

Q Did you examine the brown envelope for fingerprints?

A No, I did not.

Q Had you ever prior to the examination of Government's Exhibit 3 examined any other object similar to this one for traces of heroin?

A I have examined suitcases, safe-deposit boxes but not a radio.

Q I have not asked You about a suitcase. I simply asked you, prior to the time that you examined Government's Exhibit 3 had you examined for traces of heroin a similar instrument?

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A Not of a similar instrument.

MR. SOLOMON: Thank you very much.

THE COURT: Anything else?

REDIRECT EXAMINATION

XX BY MR. KAUFMAN:

Q Have you examined other objects for the presence of controlled substances?

A Yes.

Q On how many occasions?

A Numerous occasions. We are always analyzing things for traces.

Q You say you didn't check for fingerprints on the clear packets or brown envelope? Is there any reason?

A I did not receive a request to check for fingerprints. We don't check unless there is a request from either the special agent in charge of the case or the Assistant District Attorney.

Q I believe you gave an explanation as to those clear packages as to the difficulty of finding fingerprints.

Can you give us an explanation as to that?

A Yes, in the few hundred times I analyze for fingerprints on plastic I never came across any prints. The plastic just doesn't absorb the oils from the skin

MR. KAUFMAN: Nothing else.

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MR. SOLOMON: Nothing else.

(Witness excused.)

THE COURT: Suppose we take a few minutes recess. Members of the jury, you may retire to the jury room for a few minutes.

(Jury excused.)

THE COURT: I assume counsel saw one of the jurors give a note to the clerk. The note was then given to me, and it is a question from the juror. Then I asked a question of the witness.

You remember yesterday one of the jurors wanted to ask a question and I instructed that juror to write it out. This juror wrote out the question and I asked it, and I will have the clerk mark this as a Court's exhibit. I think I asked it in the words of the question. It says here:

"From the time of the arrest to the time of the completion of the interview was Tony Moy and Lai Lai Kuen ever alone together?"

MR. SOLOMON: I remember your Honor asking that.

THE COURT: Could you ask this note as a Court exhibit.

(Court's Exhibit 2 waas marked for identification.)

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(Jury in box.)

MR. KAUFMAN: The Government calls Richard Bell.

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R I C H A R D B E L L , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Bell, by whom are you employed?

A The Drug Enforcement Administration of the Department of Justice.

Q In what capacity are you employed?

A Special agent.

Q How long have you been a special agent?

A Since its inception, July 1, 1973.

Q Prior to that --

A I was a Customs officer, United States Customs.

Q Can you keep your voice up a little bit?

A Surely.

Q On August 1, 1974, were you present in the offices of the United States Attorney when the defendant Chan Yuk Po was interviewed By an Assistant United States Attorney?

A I was.

Q Do you see the defendant Chan Yuk Po here in court?

A Yes, he is in the center of the lady and gentleman at the table there.

MR. SOLOMON: Identification is conceded.

Q Was an interpreter present at this interview?

A There was.

Q Was Chan Yuk Po fully advised of his constitutional rights?

A He was.

Q Was he advised that he has a right to refuse to answer any questions?

A Yes, he was.

Q Was he advised that he had an absolute right to remain silent and if he chose to answer any questions any statement he made could be used against him in a court of law?

A Yes.

Q Was he advised of his right to call an attorney, to have an attorney present?

A He was.

Q Was he advised that if he could not afford an attorney, an attorney would be appointed to represent him

and that he did not have to answer any questions until that attorney was appointed?

A Yes, he was.

Q Did he indicated that he understood those warnings?

A He did.

Q Was Chan Yuk Po asked about a trip he made to Hong Kong a few months ago?

A Yes, he was.

Q Was he asked whether or not he ever brought in heroin from Hong Kong?

A Yes, he was.

Q What was his answer to that question?

A I believe he said he didn't.

Q Did not?

A He had not brought in any heroin.

Q Was he asked whether or not he brought a radio with him when he came from Hong Kong on that last trip?

A I believe he was, yes.

Q What was his answer to that question?

A He didn't know anything about it.

Q Did he deny ever having a radio with him when he came from Hong Kong?

A Yes, I believe he did.

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Q When you say "believe," are you sure or not?

A Yes, he said he didn't bring in a radio.

MR. KAUFMAN: I have no further questions.

CROSS EXAMINATION

BY MR. SOLOMON:

Q Were you asking the defendant Po the questions?

A No, I was not asking the questions.

Q An interpreter?

A The United States Attorney asked the questions.

Q In English?

A Yes, he put the questions; he phrased the questions in English, yes.

Q The defendant answered in English?

A No, the defendant answered in Chinese.

Q Who translated his Chinese?

A The interpreter.

MR. SOLOMON: Your Honor, I object and ask that the entire testimony be stricken. There is no proof that the interpreter interpreted what the defendant said.

THE COURT: No, I will permit it to stand.

MR. SOLOMON: We don't know anything about the interpreter or what he was doing.

THE COURT: We will get his name.

MR. KAUFMAN: The interpreter is here and has

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been interpreting since the beginning of the trial, Caroline Lin.

MR. SOLOMON: I will ask the interpreter.

THE COURT: You can put her on the stand. Anything else?

MR. KAUFMAN: Nothing else.

MR. SOLOMON: No cross.

(Witness excused.)

MR. KAUFMAN: The Government calls Heather Campbell.

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H E A T H E R C A M P B E L L , called as a witness by the Government, being first duly sworn, testified as follows:

MR. KAUFMAN: Your Honor, at this time I would like to turn around the map I have previously drawn on the blackboard.

THE COURT: All right.

MR. KAUFMAN: I ask the members of the jury if they can see it well enough.

Is there any problem with the glare from the windows?

THE COURT: Do you want to turn the blinds up, Mr. Clerk? It might help.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Is it Miss or Mrs. Campbell?

A Miss.

Q By whom are you employed?

A By the Drug Enforcement Administration.

Q In what capacity?

A Special agent.

Q How long have you been a special agent for the Drug Enforcement Administration?

A Approximately three years.

Q Directing your attention to July 16, 1974, were you on duty on that day?

A Yes, sir.

Q What was the nature of your assignment?

A I was on surveillance.

Q In what area were you on surveillance?

A Near Bayard Street in Chinatown.

Q And what was the nature of your surveillance?

A It was surveillance of a meet and a purchase of heroin.

MR. KAUFMAN: If I may with the Court's permission ask the witness to testify from next to the blackboard and follow on the blackboard her testimony as to what she observed while she was on surveillance?

THE COURT: Yes, if she is going to refer to the map it might be easier.

Q Can you tell us, No. 1, is that map an accurate representation of the area where you were on surveillance?

A Yes, sir.

Q Can you tell us where your surveillance position was?

A Yes, sir, I was right here on Bayard Street. It would be the northeast corner.

Q Were you in a car or on foot?

A Yes, I was in a car.

Q Can you tell us what you ob served while you were on surveillance duty?

A Yes, sir. While sitting here we got a radio communication that the defendant had just been at the door in the apartment and that he was wearing a green pants suit outfit and carrying a light-colored large bag, and I observed her come out of this building walking down the street, come over here and enter Kings Coffee House.

Q Was this the woman defendant subsequently identified as Lai Lai Kuen?

A Yes, sir.

Q What did you see after she entered Kings Coffee House?

A After she entered, just a few minutes later she came out and she came on this way, walked by me, and went into 50 Bayard Street.

THE COURT: What is the street running up to Canal Street?

THE WITNESS: It is Elizabeth Street.

THE COURT: Elizabeth Street?

THE WITNESS: Yes, sir.

THE COURT: And the apartment to which you pointed a moment ago, what number Bayard Street is that?

A 50 Bayard Street.

Q Now, when you saw Lai Lai Kuen exit the restaurant, was there anybody else in the vicinity of the restaurant that you observed?

A Yes. When she came back there was a man who came out who was wearing a pink sheet and dark slacks, and the period of time she was gone, he was outside the restuarant looking up and down the street.

Q When Lai Lai Kuen Kuen went back to the restaurant, what did this man do?

A He reentered the restaurant, too.

Q Do you see that man in court today?

A Yes.

Q Point him out?

A He is the gentleman sitting here (pointing).

THE COURT: The defendant has been identified.

Q And then what did you observe after both Lai Lai Kuen and Chan Yuk Po reentered the coffee house?

A After just a few minutes Lai Lai Kuen came out and she walked north on Elizabeth Street and then the man wearing the pink shirt and the dark slacks also went out on Elizabeth.

Q Referring to Chan Yuk Po?

A Yes.

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Q Did you observe anything else?

A Yes, through radio communication I was aware that Lai Lai Kuen had walked --

MR. SOLOMON: I object to what she was aware of.

THE COURT: Is this something you saw or information you were told over the radio?

THE WITNESS: This was information over the radio.

THE COURT: Sustained.

Q Once Lai Lai Kuen walked up Elizabeth Street and turned into Canal Street, could you see her after that?

A No.

Q You saw her walk up Elizabeth?

A Yes.

Q What did you observe Chan Yuk Po do?

A Walk up Elizabeth Street, too.

Q Rhen did you lose sight of both of them?

A Yes.

Q You remained in your surveillance on Bayard and Elizabeth?

A Yes, sir.

Q What was the next thing you observed after that?

A The next thing I saw was Lai Lai Kuen rounding this corner going into 50 Bayard Street.

Q Was that the last thing you observed?

A Yes.

Q Were you aware that shortly thereafter she was arrested in the building 50 Bayard Street?

A Yes, sir.

MR. SOLOMON: That is objected to.

THE COURT: I agree with you, Mr. Solomon.

MR. KAUFMAN: No further questions.

MR. SOLOMON: No cross.

(Witness excused.)

MR. KAUFMAN: The Government calls John Lawler.

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JOHN LAWLER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Lawler, by whom are you employed?

A I am employed by the United States Department of Justice as a special agent for the Drug Enforcement Administration.

Q How long have you been a special agent?

A A little over two years.

Q Directing your attention to July 16, 1974, were you on duty on that date?

A Yes, sir, I was.

Q What was the nature of your assignment?

A I was a surveillance agent working in Chinatown in the vicinity of 50 Bayard Street.

Q Mr. Lawler, can you please go to the blackboard for the continuation of your testimony.

Using the pointer there on the blackboard can you show us where your surveillance position was initially?

A Initially I was located right here on the Bowery.

Q Were you on foot or in a car?

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A I was initially in acar.

Q Tell us what the first thing was you observed?

A The first thing I observed after receiving information over the radio was that a female subject was coming out on the street. I waslked around to this part of the street on Bayard. I observed an oriental female coming out of the apartment building here at 50 Bayard Street. She walked west on Bayard Street and then headed north on Elizabeth Street, crossed over and entered the King's Restaurant.

Q Was this oriental female the defendant subsequently identified as Lai Lai Kuen?

A Yes.

Q Where did you position yourself after Lai Lai Kuen entered the coffee house?

A There is an arcade situated here, I believe; it goes all the way through to the Bowery, and I was standing inside the arcade.

Q What did you observe then?

A Several minutes later the female subject, Lai Lai Kuen, came out of the coffee shop by herself and took the same route back to 50 Bayard Street.

Q Did you follow her back to 50 Bayard Street?

A Yes, sir, I did.

Q Then what happened?

A Again we received word she was on her way down. I observed her coming out of the building. I followed her back to the King's Restaurant. She went inside. She was inside for several minutes. This time she came out with an oriental male. They talked out in front of the King's Coffee Shop for several minutes, and the man handed her a white piece of paper, about the size of an envelope or napkin. She took the piece of paper and started walking north on Elizabeth Street, took a left on to Canal, headed west, walked over two blocks.

I lost sight of her for about a minute here in this area, and then I walked over to the corner of Canal Street and Mulberry Street. I looked down the street and I observed her just as she was entering a building over here. It is eight 87 or 89 Mulberry Street. I walked down the street, waited for several minutes, and she came out again and she headed up on Canal, headed east, and went back to the apartment building here at 50 Bayard Street.

Q Now, the oriental male that you saw talking to Lai Lai Kuen outside the coffee house and hand her a white slip of paper, do you see that person here in court?

A Yes, sir, I do.

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Q Can you identify him, please?

A The gentleman sitting here in the center.

MR. SOLOMON: He identifies the defendant.

Q After you saw the defendant Chan Yuk Po hand that slip of paper to Lai Lai Kuen, did you observe any more that day?

A No, sir, that is the only time I saw him.

MR. KAUFMAN: No further questions.

CROSS EXAMINATION

XX BY MR. SOLOMON:

Q Do you know a person named Heather Campbell?

A Yes, sir, I do.

Q Was she on duty, on surveillance, in the same vicinity at the same time you were there?

A Yes, sir, she was.

Q Where was she stationed at the time she observed what she described here a little while ago?

A She was in a car that was located on Bayard Street just to the west of Mott Street or -- excuse me -- it would be the intersection of Bayard and Elizabeth Street.

Q You testified that you saw the defendant come out of this Mai Lai from here?

A Yes, sir.

Q From the coffee house?

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A No, it was on Bayard.

Q Then she would be about here?

A On the other side of the street, the north side.

Q Did you then meet Miss Campbell and discuss what she saw?

A At what point, sir?

Q Well, did you have a conversation with Miss Campbell and compare the notes as to what you said here you saw and what she saw?

A Do you mean that day?

Q Well, if I were to tell you that Miss Campbell testified that she saw a lady, Lai Lai, come out here and walk up the street and shortly thereafter the defendant Po came out and walked up the street, would you say that she was in error?

A Yes, sir.

Q Would you say that your recollection is better than hers?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q Now, will you tell us when the defendant Chan Yuk Po gave this lady a piece of paper, did he give it to her with his right hand or left hand?

A Yes.

Q You saw him hand her a slip of paper?

A Yes, sir.

Q Where were you stationed when you saw him hand her a slip of paper?

A There is like, I say, an arcade located on the opposite side of the street and I was standing there.

Q You mean here?

A I believe it is further up, sir.

Q Here?

A Somewhere around that vicinity.

Q And how far from here were you stationed?

A I was across the street. So it is the width of the street.

Q Here?

A The width of the street, plus going up north.

Q And where was the car in which Miss Campbell was stationed?

A The car would be located Bayard Street just to the east of Elizabeth Street, on the north side of the street.

Q That would be here?

A No, sir, it was on Bayard.

Q Here?

A I don't Recall.

Q Assume that this is the piece of paper he gave her. Did he hold up his hand like this? Was his fist closed?

A No, sir, it was open.

Q Did he carry it like this?

A I remember it was held out like that (indicating).

Q He held it out open?

A Yes.

Q And he gave it to her in public?

A Yes, sir.

MR. SOLOMON: That is all.

THE COURT: Anything else?

MR. KAUFMAN: No redirect.

THE COURT: Thank you very much.

(Witness excused.)

MR. KAUFMAN: The Government calls William Mockler.

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WILLIAM MOCKLER, called as a witness by the Government, being first duly sworn, testitied as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Mockler, by whom are you employed?

A By the United States Justice Department, Drug Enforcement Administration.

Q In what capacity are you employed?

A Special agent.

Q How lcng have you been a special agent?

A About five and a half years.

Q Directing your attention to July 16, 1974, were you on duty on that day?

A Yes, sir.

Q What was the nature of your assignment?

A On that particular day I was on a surveillance assignment.

Q Can you please proceed over to the blackboard for the remainder of your testimony.

On that day were you on surveillance duty in the Chinatown section?

A Yes.

Q Where was your first surveillance position on that

day?

A It was right here (pointing).

Q Will you use the pointer?

A That would be on the southwest corner of Bowery and Bayard.

Q Could you observe anything from that position?

A From this position I was able to observe the entrance to 50 Bayard Street.

Q What did you observe happen, if anything?

A In this position I observed relatively nothing at that time.

Q Did you then change your surveillance position?

A Yes, sir.

Q Where did you go?

A I moved to a position in the vicinity of the King's Coffee House on Elizabeth Street.

Q What did you observe there?

A At this location I observed an individual who was later identified as Tony Moy enter the coffee shop. A short time after he did enter into the coffee shop I observed a female wearing a light green pants suit and carrying a white handbag exit the coffee shop, this lady being later identiried as Lai Lai Kuen.

I followed the female to 50 Bayard Street, where

she entered at that time.

Q And what was the next thing that happened?

A I took a position across the street and a short time later I saw the female come out of 50 Bayard Street and return to the coffee house on Elizabeth Street.

Q Did you follow her to the vicinity of the coffee shop?

A Yes, sir. At that time I took a surveillance position on a stoop, a porch that was an entry [illegible]e building next door.

Q What did you observe?

A Lai Lai Kuen remained in the coffee house for approximately five to ten minutes -- maybe not even that long -- I'm not sure how long -- a short period of time. She exited the coffee house and began walking north on Elizabeth Street.

At the same time that she entered the coffee house I observed another individual, oriental individual, come out with her. He stood in front of the coffee house and watched Lai Lai Kuen walk up toward Canal Street. He also was watching and looking up north and south on Elizabeth Street.

Q Do you see that Oriental male here in court today?

A Yes.

Q Could you identify him?

A Yes, the gentleman sitting right here in the tan shirt.

MR. SOLOMON: Identifying the defendant.

Q What did you observe after you saw Lai Lai Kuen walk north on Elizabeth and Chan Yuk Po exit at the same time and look around?

A When Lai Lai Kuen was at the corner of Canal Street she turned left in a westerly directly. At that point this individual, Chan Yuk Po, was still standing by the coffee house. At that time I proceeded around the corner and took a position on Canal Street, looking for Lai Lai Kuen. I was not able to find her in the Canal Street area at that time. However, I was in position on the north side of Canal Street, and after a few moments I observed Chan Yuk Po come out of Elizabeth Street and also walk westerly on Canal. At that point I began to follow Chan Yuk Po. I stayed on the north side of the street and followed Chan Yuk Po to a position here on Mulberry Street. It would be the southewest corner of Mulberry and Canal.

I lost sight of him for a few minutes because there was a lot of traffic in here. But then I observed

him again right on this corner. I continued to watch him from the north side of Canal Street, and after a few moments I observed Lai Lai Kuen again coming out of Mulberry Street and walking east on Canal Street. At that point I observed Special Agent Lawler begin a surveillance of Lai Lai Kuen. At the same point in time this individual, Chan Yuk Po, began to follow Lai Lai Kuen.

I then followed both of these individuals east on Canal Street, and at this point I continued to follow Chan Yuk Po, who was walking easterly on Canal Street in a manner looking over people's heads, walking. At one point he walked in the street, looking ahead. When they got to the corner of Elizabeth Street, Lai Lai Kuen walked south on Elizabeth Street, Chan Yuk Po walked south on Elizabeth Street. I lost sight of Lai Lai Kuen on the northeast corner of Bayard and Elizabeth Street. She turned toward 50 Bayard Street.

Chan Yuk Po walked south on Elizabeth Street, stood on the corner of Elizabeth and Bayard, on the northwest corner for a few moments, turned, and i thought he was going to walk back on Elizabeth Street.

I stepped into a doorway, and when I stepped out I did not see Chan Yuk Po. I then walked down to the corner of Bayard and Elizabeth. I saw several agents

entering the building. I entered with them, and proceeded to the seventh floor, where Lai Lai Kuen was placed under arrest.

We then returned to the lobby of 50 Bayard Street. At that point I observed the individual Tony Moy in the lobby and placed him under arrest. We then looked for Chan Yuk Po, whom we didn't find in the vicinity.

MR. KAUFMAN: No further questions, your Honor.

CROSS EXAMINATION

BY MR. SOLOMON:

Q You made a memorandum some time in your office of your observations? Is that correct?

A No, sir.

Q Didn't you dictate, typewrite or make a memorandum of your activities on July 16?

A No, sir.

Q Did anyone make a memorandum for you?

A I believe one of the other agents on surveillance.

Q Did you dictate it or did the other agent dictate it?

A I don't recall.

Q Well, did You read a memorandum In this courtroom that was given to you this morning by Mr. Kaufman to refresh

your recollection?

A Yes, sir, that was my grand jury testimony, sir.

Q Didn't you make a report to your office of your activities?

A No, sir.

Q What I am trying to find out from you, Mr. Mockler, you testified here this morning that you saw the female defendant come out?

A Yes, sir.

Q Then you saw the male defendant come out. Did they both come out hand in hand, I mean, at the same time?

A I would say approximately the same time.

12 Q One in back of the other?

A I think the female came out possibly one or two steps ahead of the male.

Q When the female came out you think she walked a step or two ahead?

A It is possible.

Q Then the defendant came out?

A Yes, sir.

Q And when the defendant came out the female was already walking up Elizabeth Street? Is that right?

A Yes, sir.

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Q And at that point the defendant also walked up Elizabeth Street?

A I didn't see him walk up Elizabeth Street.

Q Did you see where he went?

A He stood in front of the coffee shop.

Q Is the coffee shop at that spot? Is that the coffee shop?

A Yes, sir.

Q Now, as I understand you, Lai Lai Kuen came out?

A Yes.

Q She turned left and starting walking up the street and just as she did that the defendant came out?

A They came out at about the same time.

Q Did they both come out together holding hands?

A No, sir.

Q The female came out first, didn't she?

A Yes.

Q And almost instantaneously thereafter this defendant came out?

A Yes, sir, one or steps later.

Q That is correct, isn't it?

A I would say one or two steps later the defendant came.

Q And by the time he had come out she had made a

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left turn and was walking up Elizabeth Street?

A She started to walk up Elizabeth Street, yes, sir.

MR. SOLOMON: Nothing further.

MR. KAUFMAN: Nothing further.

(Witness excused.)

MR. KAUFMAN: The Government rests, your Honor.

THE COURT: Suppose you take your luncheon recess. We will excuse you then until 2 o'clock, when we will resume.

(Jury excused.)

THE COURT: Do you want to make your motions?

MR. SOLOMON: The defendant moves for a dismissal of the indictment and a directed verdict of acquittal on the ground that the Government has failed to establish a prima facie case.

THE COURT: I feel obliged to deny the motion, and I do not deny it.

Now, are we going to sum up this afternoon or tomorrow morning?

MR. SOLOMON: I feel we will have the defendant on this afternoon unless there is a change.

THE COURT: Then why don't we go out and have lunch and come back at 2 o'clock.

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(Jury in box.)

(Interpreter present.)

THE COURT: We are at the stage of the trial when counsel will make their closing arguments tothe jury. Under our practice the defendant makes the first closing argument.

Mr. Solomon, will you address the jury?

MR. SOLOMON: If it please your Honor, Mr. Kaufman, Madam Forelady, ladies and gentlemen of the jury:

You see, this is a stage in the course of the trial which I can frankly state most of you are unfamiliar with, because most of you have never sat on a case before. It is a stage in the trial where defense counsel first marshals the evidence and makes comments on it. I must warn you that what I say is not gospel, I mean, you don't have to take anything that I say for granted. His Honor will explain that to you in a little while. It is what you recall the testimony to be which counts. And his Honor will tell you that even if he tells you what he recalls the testimony to be and you disagree with him, it is your recollection that counts, not his.

Now, ordinarily if this were a long trial I would enter with you upon a discussion of the testimony, but the trial was rather short. In fact, it is one of

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the shortest trials we have had in this court in all the years I have been around.

What is the gravamen, what is the important thing in the case?

You will note that his Honor informed you at the beginning of the trial, he read an indictment which charged this defendant and the two others who pled guilty, who took the stand, were charged with having entered into a conspiracy to unlawfully, knowingly and wilfully violate certain sections of Title 21 of the United States Code.

In plain English language, they were charged with a violation of what we call the Federal narcotics laws.

And the second count, instead of being a conspiracy, is what we call a substantive charge, that he had in his possession and distributed, sold somebody, or gave somebody, or intended to sell to somebody certain narcotics which are described in Counts 1 and 2, 11 ounces of heroin.

Now, let me explain parenthetically -- I have had two cataract operations -- I can't see through one set of glasses and I can't read through the other set -- I'm between the devil and the deep blue sea, and that is why I have to change glasses as I go along -- the purpose of the

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trial was to elicit from witnesses what took place, because none of us were there. His Honor wasn't there; Mr. Kaufman wasn't there; I was not there. So we must base our analysis of the evidence as to the testimony that came from the mouths of the witnesses and the documentary evidence.

In simple language, what you will have to consider is, did my client, Chan Yuk Po, bring the narcotics in Government's Exhibit 1 to Moy and Lai Lai.

Now, that is all there is to it. That is the question. That is the question I am going to direct myself to.

Let's assume his Honor has charged you on the law. He repeats what he told you at the inception of the trial, that every defendant is presumed to be innocent from the commencement of the trial, all through the trial, except if at the end of the trial and in your deliberations you are satisfied beyond a reasonable doubt -- and his Honor will charge you what "reasonable doubt" is -- that the Government has established its case. So we start off now with the presumption that my client is innocent.

His Honor also told you at the inception of the trial that the defendant does not have to do anything, that the Government has the burden in this case, the Government

has the burden to prove certain elements which his Honor will instruct you on, and if they prove those elements, they must be proven beyond a reasonable doubt.

Now, remember those things: Presumption of innocence, beyond a reasonable doubt.

The next point is testimony of the alleged accomplices. His Honor will tell you, will charge you that both the male defendant Moy and the female defendant Lai Lai are accomplices, and he will charge you to what degree you are to analyze their testimony. That is the law.

Let us assume that I am one of the jury panel, that I am with you folks in the jury room and we are discussing this testimony, and the forelady has asked several of the jurors to express their opinion, and the forelady calls on me.

Now, as a juror I am giving you my opinion, not as the advicate here, and I say to you, "We have to decide whether this defendant is the culprit who brought the narcotics into the country or obtained narcotics somewheres and brought it to Moy and Lai Lai."

Now, I am arguing this with you. That is the point. Who else is there here who says that my client brought it to them? Take their testimony out of this

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case and you have no case.

Now, one of the jurors, I subsequently learned from the statement made by his Honor, posed the most important question that I think is involved in this case; he sent a note to his Honor and asked, "Were these two, Mr. and Mrs. Moy alone together?" and you recall that the witness testified, "Yes." And you will recall that I asked that Government agent, and he said that they were arrested late in the afternoon, they were not arraigned, and that they slept in a hotel for three or four days.

What do you think the purpose of their testimony was? I am arguing this. I am arguing as a layman. I tried to eradicate from my mind all the legal knowledge I have.

Well, now, their liberty is at stake, his liberty is at stake, and the purpose of that question as a juror now makes me feel that the purpose these two defendants were permitted to stay in a hotel without arraignment in court, without being brought to a jail where they should be kept overnight until they are bailed, until they are arraigned, was so that some Government agent could confer with them and induce them in some fashion or other -- I don't know -- it is my analysis -- to point to someone who brought it to them, or who will say so so that they can get

consideration from the Court.

Now, I can't tell you what the Court itself is going to do. But there was an open statement to this Court by Mr. Kaufman, and a truthful statement, despite the fact that the witnesses said no promises were made, he told them, and it is common practice, it was done by me years ago when I was a prosecutor, "We will notify the Court of the aid and assistance given by the accomplices and the informers." They are out for their own interest.

Now, you must analyze whether they are telling the truth or not. Remember that.

You heard the young lady testify that she lent him $3000. First it was $2000. It was to pay a gambling debt. And the second time, $3000. And I asked her point blank, "Did you know that he was going to buy narcotics with this?" Not in those words. "Did you know that he was going to bring in narcotics?"

The answer was no.

And the same question was put to the male defendant, Mr. Moy. And I said to Mr. Moy, a little more emphatically than I did to Lai Lai, "When you saw the narcotic in Government's Exhibit 3, didn't you tell Mr. Po, 'Now, get the hell out of here and take this out?' He said no."

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And then he went further on and testified that later on Po asked him to get a buyer for the narcotics.

Now, that all came subsequent to the time Lai Lai and Moy were alone in the hotel room.

The exhibits are here. They are all in evidence. And his Honor will tell you that you have a right to refer to those and consider them.

But what is the gravamen, what is the underlying principle in this case? Did the defendant Po bring the narcotics, which are Government's Exhibit 1, in Government's Exhibit 3 to the home of the co-defendants who pled guilty?

They both testified that they did not give him any money to bring the narcotics. Nevertheless, they both pled guilty to a count in the indictment, the first count, not to the possession and distribution, but the first count, which reads as follows, that they did unlawfully, intentionally and knowingly combine, conspire, confederate and agree. Why, they testifeied under oath on cross-examination by me that no discussion of narcotics was ever had and they did not give money for that purpose.

Now, there we are.

I'm not here to make some flowery speech. It is my natural tone of voice. But I am here as an advocate

to see that justice is done. Mr. Kaufman is here as an advocate to see that justice is done. His Honor is here, although the judge, but still an advocate to see that both of us do the proper thing.

I told you at the inception I don't look for sympathy, I don't look for favors. When I leave the courtroom and I go home and go to bed, my conscience, I tell you, is clear, it's clean. I don't have to worry whether I did something wrong for this defendant or for anybody else. I say to you when you analyze the testimony and find there is no independent evidence, direct or indirect, of any witness that they saw or got an acknowledgement from this defendant that he ever had these narcotics, and you are so satisfied, then you must acquit him, and his Honor will so tell you.

If, however, you come to the conclusion that the Government has established the charge or the chareges in accordance with the law as his Honor will lay it downto you, and that the Government has established it beyond a reasonable doubt -- and you will soon find out what we mean by "reasonable doubt" -- then it is your duty to convict. But in analyzing the testimony I'm going to ask you to do what I do, when you get through and go home and say to yourselves, "I was a juror: I did what I think is right;

my conscience is clear."

Now, please, you can't speculate, you can't guess, you can't make an unacknowledged inference, no supposition, no perchance, no maybe he has something to do with it. It doesn't go in this court; it doesn't in the American system of jurisprudence.

You must decide the guilt or innocence of this defendant strictly on what took place in the courtroom and upon his Honor's charge, and I am sure that if you do that and you come back with whatever your verdict may be, it will be an honest determination, and you will have a clear conscience.

Thank you.

THE COURT: Mr. Kaufman, will you please address the jury.

MR. KAUFMAN: Thank you.

Ladies and gentlemen, while this was a brief trial, as Mr. Solomon mentioned, I feel it is my obligation to review with you in detail what the evidence was in this case, because the evidence is what this case is all about. No amount of argument, no amount of supposition can make the evidence go away.

As we start to review the evidence we must remember what this case is all about; it is about narcotics,

specifically heroin, and about a conspiracy to distribute that heroin.

Mr. Solomon has read part of the first count of the indictment to you, the conspiracy count, to which Lai Lai and Moy pled guilty, and stated to you there is some inconsistency in their having pled guilty, whereas on the stand they denied knowing that before Chan Yuk Po went to Hong Kong he was going to purchase heroin.

I would like to read part of the second paragraph of the first count to you, the conspiracy count, which Mr. Solomon did not read to you --

" . . . and it was part of said conspiracy that the defendants unlawfully and intentionally would distribute and possess with intent to distribute Schedule 1 narcotic drugs."

That part of the conspiracy that Lai Lai Kuen and Moy testified about, that they knowingly participated in, was not the importation of the heroin from Hong Kong into the United States, but the possession, distribution and sale of it here in New York to the undercover agent at 50 Bayard Street on July 16.

That is what they are pleading guilty to, and that is the conspiracy was all that heroin.

Now, as we review the evidence, keep in mind

what I told you on Monday when I first talked to you, when I told you that a criminal conspiracy was not evidenced by a formal document, but, rather, it is necessary to scrutinize the activity of those involved in order to see that informal working arrangement, what the law calls a conspiracy, in other words, a joint effort to engage in criminal conduct, or, in simple words, a partnership in crime.

You have heard about this partnership in crime from two of the participants, Lai Lai Kuen and Tony Moy. They admitted their guilt and they told you about this conspiracy.

They first met Chan Yuk Po about four or five months ago. Chan Yuk Po at that time mentioned that he may be traveling to Hong Kong soon and would be buying merchandise there, but he would not be specific as to what that merchandise was. And around the same time Chan Yuk Po asked Tony Moy if he could borrow $2000, because he had gambling losses. He didn't have the money. He asked Lai Lai Kuen if she would lend the money to Chan Yuk Po, and she did, and Chan Yuk Po said he would repay her in a few days. He did return the money in a few days, and, indeed, a few weeks later he told Tony Moy and Lai Lai Kuen he was going to Hong Kong, and he needed $3000 to buy

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some merchandise, or what he called "Chinese medicine" in Hong Kong.

And Lai Lai asked Chan Yuk Po when she would get back the $2000 she already lent him, and he stated he would repay her the $2000, plus the $3000 he wanted when he got back from Hong Kong, and plus give her a $1000 extra as interest or a gift.

Lai Lai refused to lend him the $3000, but told him if he went to Hong Kong and once there if he still needed the money in an emergency she would probably send it to him, and Chan Yuk Po went to Hong Kong, and we know he arrived there on May 13, 1974, because his reentry permit, which is in evidence here as Government's Exhibit 2, is stamped in Hong Kong on that date.

16 And Chan Yuk Po called Lai Lai Kuen from Hong Kong asking for the $3000 and telling her that he was ready to buy this merchandise, that he would bring it back to the country, and once he did that he would be able to pay her back. Lai Lai finally agreed to send the $3000 to Chan Yuk Po. She withdrew $3000 from her bank account on May 23. Her bankbook verifies that. She gave it to Tony Moy, who wired the money to Chan Yuk Po in Hong Kong on May 24. We know that from Government's Exhibit 10, the bank document records.

About a week or so later Tony and Lai Lai called Chan Yuk Po in Hong Kong to verify that Chan Yuk Po received the money. He said he received it, that he had purchased the merchandise, and that he would be returning soon.

We know that Chan Yuk Po left Hong Kong on June 7, 1974, and arrived in Honolulu, Hawaii, the same day. His reentry permit is stamped both in Hong Kong and in Honolulu on that date. We know, more, however, about Chan Yuk Po's arrival in Honolulu. He made a Customs declaration there, and among the thing he declared was a phonograph-recorder-radio. This was listed on his Customs declaration, which is Government's Exhibit 4 in evidence, and the amount of the Customs duty he had to pay was $3.30, which appears on the back of Government's Exhibit 4. That is the same amount as contained on the receipt that was found in his reentry permit, $3.30.

There can be no doubt that Chan Yuk Po brought to this country from Hong Kong a combination phonograph-recorder-radio, the same type of machine which Lai Lai Kuen and Tony Moy said Chan Yuk Po brought up to their apartment, took apart, and showed them the heroin hidden inside. There is no doubt about that. It appears right here on Chan Yuk Po's Customs declaration. He

declared it when he returned from Hong Kong.

You remember that Chan Yuk Po was interviewed in the United States Attorney's office the day of his arrest and was asked about bringing heroin into this contry. He denied it. He was also asked whether or not he brought a radio into the country, and Chan Yuk Po denied that also. We know from the proof here that he did bring in the radio. We know he was not telling the truth when he denied it. Why then did he deny that he brought in the radio? The Government submits that the answer is simple -- he knew that the radio was incriminating evidence, and by admitting to having brought it into this country he could be confessing his guilt.

So he denied having the radio, and if that denial had been true it would have tended to exculpate him or tend to show that he was innnocent. However, the denial was false, and as his Honor may instruct you later on, such an exculpatory statement when shown to be fal se tends to show the defendant's guilty consciousness.

Chan Yuk Po returned to Boston and called Lai Lai Kuen and Tony Moy from there, telling them he would be seeing them soon with the merchandise he brought from Hong Kong. He came to their apartment a few days later, where he left the radio with Lai Lai Kuen, saying he would

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return later in the day. And Chan Yuk Po came back to the apartment. Tony Moy returned from work and was there with Lai Lai. They asked Chan Yuk Po if the radio was the merchandise that he brought back from Hong Kong for $3000. His answer was to unscrew the radio, Government's Exhibit 3, to take it apart, to show them the heroin that was hidden inside, saying it was heroin worth about $30,000.

Chan Yuk Po asked Tony Moy to find a customer for that heroin. Tony agreed. Tony agreed to find a customer for it. He admitted it on the stand.

Then Chan Yuk Po took the heroin out of the radio, packed it in a brown paper bag, and left the apartment with the heroin. He left behind the radio with Lai Lai Kuen and Tony Moy, saying it was a gift to them. Tony Moy did go out and did find a customer for the heroin. That customer turned out to be Joe Salvemini, the Federal agent acting in an undercover capacity, who was acting through Jeanie Lee, the confidential informer. That wasn't until July 16, however

Before then Chan Yuk Po told Tony Moy and Lai Lai about bringing in more heroin. He told Tony Moy that he, Chan, was bringing another small shipment of heroin, for which he needed $1100, so that his associate from Hong

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Kong could bring it into South America and ultimately into the United States.

Once that was sold, Chan was going to bring in another shipment, and this shipment was going to be 50 or 60 pounds of heroin. Chan Yuk Po described how that heroin was going to be brought in. He said that three associates from Hong Kong were going to take it to South America and that he, Chan Yuk Po, would then go to South America with suitcases with false bottoms, hide the heroin in the suitcases, and bring the heroin into the United States.

Chan Yuk Po also told Lai Lai Kuen about this, but it came up in a different context. When Chan Yuk Po needed that $1100, he received a telephone call from Hong Kong. He received this phone call in Lai Lai Kuen's apartment, and Lai Lai asked him about the call, and Chan Yuk Po said that it was from an associate in Hong Kong, and that he needed $1100, and he asked Lai Lai for it.

Chan Yuk Po said the associate in Hong Kong called him, he needed the expense money to go to South America.

18-17 Lai Lai gave Tony Moy the $1100, who sent a money order to a name and address in Hong Kong provided by Chan Yuk Po. We know that happened. We have here

as Government's Exhibit 7 the copies of the money orders totaling $1100, which Tony Moy said he filled out using Chan Yuk Po's name and sending it to an individual in Hong Kong whose name was given to him by Chan Yuk Po.

After those money orders were sent, Lai Lai Kuen received two telephone calls for Chan Yuk Po in her apartment. These calls were from Hong Kong. She asked Chan Yuk Po what those calls were all about, and Chan Yuk Po, as he previously told Tony Moy, that he was planning on bringing in a 50 to 60-pound shipment of heroin.

He also explained to her, as he had to Tony Moy, that the shipment was going to come in hidden in suitcases.

While this was going on Tony Moy was setting up a deal for the sale of the heroin that Chan Yuk Po had already brought in in from Hong Kong hidden in the radio. He arranged for the sale of one pount to an individual who unbeknownst to him turned out to be a Federal agent. It was set for July 16 at 50 Bayard Street.

He asked Tony Moy to go and Tony Moy went to the apartment, where Jeanie Lee was, who was a confidential informant. Tony asked to see the money, and the woman brought the money to the door and Tony looked at it. Then he went back to the King's Coffee Shop on Elizabeth Street, where Chan Yuk Po and Lai Lai was sitting. Then Chan

Lai Lai to go to the apartment and inform the customer there were only 11 ounces available, and not the pound, and whether the customer wanted to purchase that amount. Lai Lai went there, and the customer agreed to purchase the 11 ounces.

Lai Lai returned to the coffee shop and informed Chan Yuk Po. She asked what the price would be, and Chan Yuk Po figured it out and told her; he also wrote the price down on a napkin and handed it to Lai Lai Kuen outside the coffee shop. As we know, the price was $20,625. We have that napkin here in evidence.

The interpreter has told you that the Chinese characters that appear on that napkin translate to $20,625..

Lai Lai Kuen met Chan Yuk Po on Mulberry Street, where he gave her the heroin wrapped in clear transparent packages contained in a brown paper bag, and Lai Lai delivered the heroin at 50 Bayard Street, where she and Tony Moy were arrested. As she told you, the heroin that she delivered on July 16 looked the same and was packed identically the same as the heroin which Chan Yuk Po had hidden in the radio and shown to Tony and her some weeks earlier. Those are the facts in the case.

Much of the evidence come from Lai Lai Kuen and Tony Moy, two individuals who pled guilty in this case and

fully admitted their participation in the crime.

In criminal cases the Government would love to be able to call as witnesses impeccable, virtuous individuals, whose moral background would be beyond reproach. But we have to be realistic. We're dealing with a conspiracy to traffic in heroin, and that kind of person just is not going to be involved in such enterprise. The Government is forced to take its witnesses where it finds them, from those actually involved, from those who were there, from those who know what happened.

The thrust of Mr. Solomon's argument is that you should not believe Lai Lai Kuen and Tony Moy because, according to Mr. Solomon, they are testifying to save themselves, to shift the blame on to somebody else in the hope of avoiding to go to jail. The Government concedes that Lai Lai Kuen and Tony Moy are testifying in order to help themselves. Sure, they hope that consideration will be given by his Honor when his Honor sentences them.

Ladies and gentlemen, I submit to you that that treatment provides Lai Lai Kuen and Tony Moy with a motive to cooperate, but not with a motive to lie. Lying would be the worst thing for Lai Lai Kuen and Tony Moy to do. If they lied and got caught in this lie, which is what usually happens, they would certainly lose any chance

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of lenient treatment from his Honor, and probably get harsher treatment than they ordinarily would have gotten, plus, they stand a good chance for being indicted for perjury.

Now, Lai Lai Kuen and Tony Moy surely got this heroin from somebody. If they are going to cooperate, the simplest thing for them to do is to tell the truth about the person who supplied them with this heroin. Why should they lie when there is so much to lose and when there is much to gain in the way of possible lenient treatment by telling the truth.

Mr. Solomon suggests to you that the story that Lai Lai Kuen and Tony Moy have told you is fabricated, that they got together, that they were alone together the night after they were arrested, cooked up the story. In fact, Mr. Solomon suggests that some Federal agent, some Government agent, got them together and induced them to cook up the story, to fabricate it out of thin air.

Ladies and gentlemen, if you think that that is what happened, that some Federal agent got Lai Lai Kuen and Tony Moy to go, induced them to make up a story, then you come back with a verdict of acquittal in five minutes. There is no reason spending more time than that, if that is what you believe.

But if that is what happened, don't you think that Lai Lai Kuen and Tony Moy would have made up a better story? Don't you think they would have embellished their story a little bit more? As Mr. Solomon mentioned to you, Lai Lai Kuen and Tony Moy testified that before Chan Yuk Po ever went to Hong Kong he never told them what the merchandise was that he was go ng to buy. They didn't know until he returned from Hong Kong, opened up the radio, and showed them the heroin that he had gone to Hong Kong for.

If you are going to make up a story against somebody to incriminate that person, you try and show right from the start that that person did things and said things which show his guilt. And if Lai Lai and Tony's stories were made up, they would have testified right at the start of their relationship with Chan Yuk Po that he told them he was going to buy heroin in Hong Kong and come back to this country and sell it. But that is not what they testified to.

Another example. Tony Moy testified that he didn't see the heroin on July 16, the day the deal was supposed to go down. What he did was simply check on the money in the apartment and tell Chan Yuk Po the money was there, and then Chan Yuk Po and Lai Lai Kuen left the coffee shop, presumably to get the heroin delivered as far as Tony

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Moy knew. If Tony Moy were making up the story, don't you think he would say that "I also saw the heroin with Lai Lai Kuen on July 16th," and he saw Chan Yuk Po give the heroin to Lai Lai Kuen? If he were making up his story, that is what he would say, because that incriminates Chan Yuk Po. That is not what he said.

Now we come to the most important point in this trial. The Government presented much more than simply the testimony of Lai Lai Kuen and Tony Moy. Mr. Solomon asked you what independent evidence is there, what independent corroboration is there.

During the two days of this trial you saw an overwhelming amount of evidence that substantiates and corroborates the testimony of Lai Lai Kuen and Tony Moy. So even if you were unwilling to accept at face value the testimony of Lai Lai Kuen and Tony Moy, the corroboration attests to their accuracy.

I simply would like to list the physical corroboration to you. First, we have Lai Lai Kuen's bankbook, which shows that indeed she did withdraw $3000 from her bank account in May.

Second, we have the bank records of the Chase Manhattan Bank, which show that Tony Moy did, indeed, wire $3000 to Chan Yuk Po in Hong Kong. And, indeed, at this

trial Chan Yuk Po conceded having received the $3000 in Hong Kong.

Third, there is Chan Yuk Po's own reentry permit, which shows that he arrived in Hong Kong on May 13, left Hong Kong on June 7, and landed in Honolulu on June 7.

Contained within the reentry permit is the United States Customs permit in the amount of $3.31.

We have the actual radio-recorder-phonograph which Lai Lai Kuen and Tony Moy said contained the heroin brought in by Chan Yuk Po. And more than that, we have Chan Yuk Po's own Customs declaration which says that he brought it in, proving that Chan Yuk Po did, indeed, bring in such an instrument from Hong Kong on June 7.

And, as I have mentioned to you earlier, Agent Richard Bell testified about the interview in the United States Attorney's office in which Chan Yuk Po denied ever having brought in a radio. The only possible explanation for that false denial on Chan Yuk Po's part is because he knew he had brought heroin into this country concealed in that radio, and that radio could send him to jail.

There is more corroborative evidence. You will recall that both Lai Lai Kuen and Tony Moy testified that Chan Yuk Po was planning on bringing in a 50 to 60-pound shipment of heroin, but according to Tony Moy he wanted to

bring in a smaller shipment first hidden in a radio. For this smaller shipment Chan needed $1100 to send to his associate in Hong Kong. They lent him that $1100, and, indeed, Tony Moy sent the money order to Hong Kong in Chan Yuk Po's name pursuant to his instructions. We have those money orders here in evidence as corroboration. We have the registered mail receipt which shows that, indeed, the money orders were sent.

Lastly, and perhaps most important, we have the testimony of the three surveillance agents on duty on July 16 in which each was viewing the scene from a different perspective and each saw different parts of the whole picture.

Besides corroborating the testimony of Lai Lai Kuen and Tony Moy as to what they did on July 16, the surveillance agents also gave you an independent view of Chan Yuk Po's activities on July 16, and putting together the testimony of Heather Campbell, John Lawler and William Mockler, there is the picture that emerges. I will just move aside, so we can view the blackboard.

Tony Moy and Lai Lai Kuen entered the coffee house on Elizabeth Street, and a few minutes later Chan Yuk Po exited the coffee shop, stood in front and looked around, and while Chan Yuk Po was standing outside the coffee house,

Lai Lai Kuen left the coffee house and went into 50 Bayard Street. Chan Yuk Po remains outside the coffee shop until Lai Lai Kuen exited 50 Bayard Street and returned to the coffee shop. Then Chank Yuk Po went back to the coffee shop. A short while later Chan Yuk Po and Lai Lai Kuen exit the coffee shop together, and at the sidewalk outside the coffee shop Chan Yuk Po hands Lai Lai Kuen a white slip of paper.

We know what that white slip of paper was. That was the napkin, Government's Exhibit 8 in evidence, the napkin with the Chinese writing, which is transcribed later into $20,625.

Agent Lawler saw Chan Yuk Po give it to Lai Lai Kuen. Then Lai Lai Kuen walked north on Elizabeth Street to Canal Street, and Chan Yuk Po followed her up Elizabeth Street. Lai Lai Kuen went went on Canal Street, and Chan Yuk Po followed behind. They turned into Mulberry Street, and Chan was lost from view. However a few minutes later Chan Yuk Po reappeared on the corner of Canal and Mulberry Streets. At the same time, Lai Lai Kuen headed north on Mulberry Street and turned east on Canal Street.

Chan Yuk Po followed Lai Lai Kuen east on Canal Street, and as Agent Mockler told you, Chan Yuk Po

was kind of stretching or straining to see someone in front of him, presumably Lai Lai. On one occasion Chan Yuk Po even had to dash out into the street to view the people ahead of him.

Lai Lai Kuen turned south on Elizabeth Street, east on Bayard, and reentered the apartment building, and Chan Yuk Po followed down Elizabeth Street and stood on the corner of Bayard and Elizabeth looking around.

Lai Lai and Tony Moy were arrested in the apartment building; Chan Yuk Po disappeared and was arrested two weeks later.

What I have just recited for you is the surveillance testimony of the agents. That is what the agents saw on July 16. Think about what they saw Chan Yuk Po doing. They saw him meeting with Tony Moy and Lai Lai Kuen in the coffee shop, exiting the coffee shop, reentering, and Lai Lai exiting again, giving her the napkin with the price of the heroin on it, following her towards Canal an Mulberry, where Lai Lai said he gave her the heroin, and then following Lai Lai Kuen back east on Canal Street, obviously looking at someone in front of him.

After hearing and considering that surveillance testimony, can there be any doubt about what Lai Lai Kuen and Tony Moy told you was Chank Yuk Po's involvement in

this conspiracy? Can there be any doubt at all, given all the physical evidence you have seen here and all the independent testimony that you have seen here, that Chan Yuk Po participated in, and, indeed, was the ringleader of this conspiracy to distribute heroin?

The Government submits that there can be no doubt, no doubt at all about Chan Yuk Po's involvement as you heard it testified to by Lai Lai Kuen and Tony Moy.

Ladies and gentlemen your oath as jurors requires you to judge the testimony on the basis of the evidence in this case and in light of the law as his Honor will instruct you, without a motion, without bias, without prejudice. The Government submits if you are true to that oath that you will find the defendant guilty as charged.

Thank you for your attention.

THE COURT: Madam Foreman, ladies and gentlemen of the jury, suppose we take a few minutes recess before I give you my instructions on the law.

(Short recess.)

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THE COURT: Madam Foreman, ladies and gentlemen of the jury:

This case is now about to be submitted to you for your decision as jurors on the issues of fact here involved, and, of course, your decision on those issues determines whether your verdict is guilty or not guilty. In making your decision you act as ministers of justice and you discharge a responsibility, which it is not too much to call sacred.

In making your decisions, you are to act fairly and impartially; you are to appraise the evidence calmly and objectively, and without any bias or prejudice for or against the Government, or for or against this defendant.

You are the sole and exclusive judges of the facts. It is your recollection which controls, and nothing that counsel has said at any time and nothing I may have said or may say during these instructions is to take the place of your own recollection, which is what controls.

In giving these instructions bear in mind that I am explaining the applicable principles of law. Jurors decide issues of fact. It is your duty to take my instructions as to the law and apply them to the facts as you may find those facts to be.

That from time to time during the trial I have

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been required to make rulings on the admissibility of evidence, or motions, or any other type of ruling, is to be disregarded entirely by the jury as irrelevant to your task. These are questions of law, with which the jury is not concerned. You are not to assume that I have any opinion as to the guilt or innocence of this defendant, or as to the truth or falsity of any of the charges. The rulings that I make during the trial are, of course, determined entirely by principles of law, and not fact. You also should bear in mind that counsel not only have the right, but have the legal duty to press whatever legal objections there may be to the admissibility of evidence, and also make any other objections or requests which they deem in the interest of their client -- either has the United States Attorney for the Government, or counsel for the defendant on behalf of the defendant.

Counsel on both sides in this respect have been able and devoted in their zeal on behalf of their respective clients, and that is to be commended.

I would also remind the jury that when occasionally I asked a question of one or more witnesses -- in two instances I asked questions at the suggestion of a member of the jury, in other instances on my own initiative -- my questions were simply intended to make something clearer

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to the jury or more understandable, and, certainly, did not indicate any view or opinion of mine as to the guilt or innocence of the defendant, or as to the credibility of any witness.

Now, the indictment in this case contains two counts and names three defendants. Of the three, only one, Chan Yuk Po, is on trial before you. He is the only person whose guilt or innocence you must announce by your verdict, although in determining and in considering his guilt you may have to determine the nature of the participation, if any, of others.

In the determination of guilt or innocence you must bear in mind that guilt is personal. The guilt or innocence of the defendant on trial here must be determined with respect to him solely on the evidence presented against him, or the lack of evidence. The case of a defendant stands or falls upon the evidence or lack of evidence as to him, and not as to somebody else. Therefore the fact that other persons, Tony Moy and Lai Lai Kuen, are named in the indictment and have pleaded guilty, is not evidence of the guilt of this defendant, Chan Yuk Po, or that the crimes charged in the indictment were, in fact, committed.

The indictment, as I think I have said several

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times before, is merely an accusation; it is a charge; it is not evidence and no proof of the guilt of the defendant. You will not give any weight whatever to the fact that an indictment has been returned against the defendant. He has pleaded not guilty.

The fact, also, that the Government is a party and that the prosecution is brought in the name of the United States does not entitle the Government or its witnesses to any greater consideration than that accorded the witnesses for any other party. At the same time, the Government and its witnesses are entitled to no less consideration. All parties, Government and individuals alike stand as equals before the bar of justice.

The Government has the burden of proving the charges against this defendant beyond a reasonable doubt. It is a burden which never shifts, and it remains upon the Government throughout the entire trial.

A defendant is presumed to be innocent; he does not have any burden of proof; he does not have to prove his innocence. The presumption of innocence disappears only if and when you, the jury, are satisfied that the Government has sustained its burden of proof, that the guilt of the defendant has been proved beyond a reasonable doubt.

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In weighing the evidence to determine whether there has been such proof, you will consider the quality and the substance of the evidence, and not the quantity or the number of witnesses.

Now, I should try to give the jury some help in determining what is a reasonable doubt. It is a doubt founded on reason and arising from the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which is substantial, and not shadowy. A reasonable doubt is one which appeals to your judgment, your reason, your common sense, your experience. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. A reasonable doubt is not a vague, imaginative, speculative doubt, but such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty, would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any uncontroverted fact which by its nature is not susceptible of mathematical certainty.

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In consequence, the law in a criminal case is that it is sufficient that the guilt of a defendant be proved beyond a reasonable doubt, and not beyond all possible doubt.

Members of the jury, the indictment charges the defendant with two separate offenses under what is called the Comprehensive Drug Abuse Prevention & Control Act of 1970. This Act was passed by Congress because of a concern, among other things, with the illegal distribution of narcotic drugs which have a substantial and a detrimental impact on the health and welfare of our people. The part of this Act which is specifically applicable here is called the Controlled Substances Act.

It is not necessary for you to remember the names of these acts or the numbers of the sections which are applicable. It is sufficient if you remember what conduct the acts forbid and the essential elements of the offenses here charged. The term "controlled substance" is used in the acts to refer to any drug contained in one of the five schedules contained in the Controlled Substances Act.

Heroin is a narcotic drug included in Schedule 1 of the Controlled Substances Act. Heroin is, thus, as a matter of law, a controlled substance.

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Now, among other things, the Act makes it unlawful for any person knowingly and intentionally to distribute or to possess with intent to distribute any controlled substance, such as heroin. To distribute a controlled substance means to deliver it, that is, the actual constructive or attempted transfer of the substance.

Possession is a term used in the statute. Possession may be of two types, actual or constructive. Actual possession means that a person, a defendant, knowingly has personal, manual, or physical control of the drug. Constructive possession means that although the drug is in the physical possession of another person, a defendant knowingly has the power to exercise control over that drug or over its distribution, or to set the price for its sale or to cause its delivery. Either type of possession, actual or constructive, may be proved by direct evidence or by circumstantial evidence, or by a combination of both.

I will explain what direct and circumstantial evidence are before the end of these instructions.

Now, members of the jury, the second count charges the defendant here on trial and Tony Moy and Lai Lai Kuen with distributing and possession with intent to distribute heroin in violation of the laws to which I have

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referred.

The first count charges a conspiracy to violate those laws. A conspiracy, which is sometimes called a partnership in crime, because it involves collective or organized action, presents a greater potential threat to the public interest than the illicit activity of a single wrongdoer.

Group association or organized activity renders detection more difficult than in the instance of a single individual. For this and other reasons Congress has enacted a special law which provides that any person who conspires to violate the Controlled Substances Act is guilty of a separate offense.

There are two counts in the indictment. They charge two separate offenses. And the word "count," as I believe I explained earlier, simply means a section of an indictment charging a separate offense, one offense. And it is required in our procedure that each separate offense be charged in a separate count or section of the indictment.

The first count charges a conspiracy, that is, an agreement to violate the law.

The second count charges that those named in the indictment committed an actual violation of a law, which they are charged in the first count with conspiring

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to violate.

The second count charges that those named in the indictment, Chan Yuk Po, Tony Moy, and Lai Lai Kuen committed an actual violation of the law which they are charged in the first count with conspiring to violate.

The second count is what is often called as a term in law, but you should know it, a substantive count. A substantive count is different from a conspiracy or an agreement or partnership count.

Now, I think for our purpose it would be easier for you and more helpful if we take up the substantive count, the second count, first.

Now, let me read the second or substantive count:

"The grand jury further charges on or about the 16th day of July, 1974, in the Southern District of New York, Chan Yuk Po, Tony Moy and Lai Lai Kuen, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule 1 narcotic drug controlled substance, to wit, approximately 11 ounces of heroin."

That is the charge. The defendant pleaded not guilty to both counts of the indictment, and that forms the issue to be tried here.

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To establish the charge in this second count that I have just read, the Government must satisfy you beyond a reasonable doubt of these essential elements:

First, that the defendant distributed or possessed with intent to distribute, heroin.

Second, that he did so knowingly and intentionally. I have already explained to you the meaning of the terms to distribute and possess. To do an act intentionally means to do it voluntarily, purposely and deliberately, aware of the doing of the act and not by inadvertence, negligence, mistake, or some other innocent reason.

While there does not appear to be any dispute about it, and it was stipulated that a Government chemist would testify that Exhibit 1, the relevant container in evidence, did contain heroin, you must find as a part of the essential elements under the second count that the material found in Exhibit 1 was, in fact, heroin, and if you so find, you must also, of course, for a conviction on this count, find the other essential elements as I have explained them.

Now, Madam Foreman and ladies and gentlemen of the jury, we turn to the first count, the conspiracy count, and I will read that count to you:

"The grand jury charges:

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"1. From on or about the 1st day of June, 1974, and continuously thereafter, up to and including the date of the filing of this indictment, in the Southern District of New York, Chan Yuk Po, Yony Moy, and Lai Lai Kuen, the defendants, and others to the grand jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate certain named sections of the narcotics law.

"2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute, and possess with intent to distribute, Schedule 1 narcotic drug controlled substances, the exact amount thereof being to the grand jury unknown. . ."

In violation of the same sections of the narcotics laws.

"Overt Acts" -- and I will explain the meaning of that term in a moment --

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed In the Southern District of New York.

"1. On or about the 16th day of July, 1974, the defendant Tony Moy went to Apartment 70 at 50 Bayard Street, New York, New York.

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"2. On or about the 16th day of July, 1974, the defendant Chan Yuk Po gave a package containing approximately 11 ounces of heroin to the defendant Lai Lai Kuen.

"3. On or about the 16th day of July, 1974, the defendant Lai Lai Kuen possessed and distributed approximately 11 ounces of heroin in Apartment 70 at 50 Bayard Street, New York."

That is the first count, the conspiracy count, to which the defendant pleaded not guilty, and that forms the issue to be tried on that count.

In order to convict the defendant on the first count the Government must prove beyond a reasonable doubt the following essential elements:

1. The existence of the conspiracy as charged in the indictment.

2. That the defendant, Chan Yuk Po, knowingly associated himself with that conspiracy.

3. That one of the conspirators knowingly committed in the Southern District of New York, that is, so far as this case is concerned, the Island of Manhattan, that is, New York County, at least one overt act at or about the time and place alleged in the indictment.

It is not required that the Government prove

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that a conspiracy started and ended on the dates alleged in the indictment. It is sufficient if you find that, in fact, a conspiracy was formed and existed for some time within that period and that at least one overt act was committed in that period in furtherance of the conspiracy.

The offense of conspiracy, members of the jury, is complete when the unlawful agreement is made and any single overt act is thereafter knowingly committed by at least one of the co-conspirators.

The question, of course, arises:

Essentially, what is a conspiracy? It is a combination or an agreement of two or more persons by concerted action to accomplish a criminal or lawful purpose. As charged in this first count, to distribute or possess with intent to distribute a narcotic drug, namely, heroin.

It is not necessary for the Government to prove both of the illegal objects of the conspiracy which are alleged in the first count. It is sufficient if the Government proves either of these two objects, that is, to distribute drugs, or to possess with intent to distribute.

The gist of the crime of conspiracy is an unlawful combination or agreement to violate the law. Whether or not the conspirators accomplish what it is they allegedly conspired to do is immaterial to the question of their

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guilt or innocence of the charge of conspiracy. In other words, the success of the conspiracy need not be proven.

A conspiracy has sometimes been called a partnership in crime, a partnership in criminal purpose in which each member becomes the agent of every other member. To establish a conspiracy the Government is not required to show that two or more persons sat down around a table and entered into a solemn compact orally or in writing, stating that they had formed a conspiracy, setting forth the details of the plan, setting forth the part each was to play. It would be most extraordinary if there were ever any such agreement.

Your common sense will tell you that when men or women or both are, in fact, undertaking to enter into a criminal agreement, much is left to unexpressed understanding. From its very nature a conspiracy is almost invariably secret in its origin and secret in its execution. It is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to an understanding in common to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged

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members of the conspiracy which are done to carry out an apparent criminal purpose. Usually the only evidence available is that of disconnected acts, which acts when taken together in connection with each other show a conspiracy or agreement to secure a particular result as satisfactorily and as conclusively as more direct proof.

If, for example, several persons gather together and shortly thereafter there was concerted action among them with each of them doing something related with activities of the others, all of which contributed in the same or similar manner toward the accomplishment of the same unlawful objective, such evidence would support the inference that those persons had conspired to accomplish that purpose.

If you do conclude that a conspiracy as charged in this first count did exist, you must next determine whether the defendant on trial was a member of the conspiracy, that is, whether he knowingly associated himself with the conspiracy.

In making this determination, you should examine and consider all of the evidence relating to the first count.

I dealt in connection with the second count with the expression "knowingly" and the expression "inten-

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tionally."

I repeat that to do an act knowingly and intentionally means to do an act voluntarily, and not because of mistake or negligence or inadvertence or accident or some other innocent reason.

Members of the jury, mere association of a defendant with an alleged conspirator, another defendant or otherwise, or even a mere knowledge of the conspiracy, does not alone establish his participation in the conspiracy, if you find that, in fact, a conspiracy did exist.

In determining whether the defendant was a member of the conspiracy, you are to consider whether in some sense he promoted the venture, made it his own. And the acts and declarations of any person found by you to have been a member of the conspiracy made during its pendency and in furtherance of its objectives are considered the acts and declarations of all other members, even though they might not be present. If there was, in fact, a partnership in crime, then any act, statement or declaration of one partner in furtherance of the partnership purpose becomes the act and statement of all the other partners, even though, as I just said, they may not have been present.

At this point I think it is appropriate for me

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to refer to that expression "overt act" which I mentioned and which you find in the indictment. There must be proof of at least one overt act for a conviction under the first count. Overt act is any step, action or conduct which is taken to achieve, accomplish or further the object of the conspiracy.

I think it might be helpful to the jury if I were to refer to the reason why Congress has required the commission of at least one overt act. The purpose of requiring proof of at least one overt act is that while parties might conspire and agree to violate the law, they might change their minds before taking any step to accomplish their purpose. If they change their minds and do nothing to accomplish the agreement, then it would not constitute an offense.

Now, the overt act need be neither itself a criminal act nor the very crime which is the object of the conspiracy. Indeed, an overt can be an entirely innocent act. But if it is an act to further, to accomplish the object of the conspiracy, then it is an overt act as that term is used in the law.

Members of the jury, the guilt of a conspirator is not governed by the extent or duration of his participation in the conspiracy, or whether he had knowledge of all

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the conspirators or all the operations. Some conspirators play major parts and others play minor parts. Even if one conspirator joined the conspiracy after it was formed and was engaged to a degree more limited than that of other conspirators, he is equally culpable so long as you find that he was a member of the conspiracy. In a word, it is not required that a person be a member of the conspiracy from the start. He may join it at any point during its progress and be held responsible for all that went on before the joining and all that may be done thereafter, so long as he remains a member of the conspiracy.

Now, intent involves a person's state of mind, and while this is a fact, it is a fact which it is impossible to prove by direct evidence, short of an express admission by a defendant. Like any other fact, intent may be proved by circumstantial evidence, and proof of the circumstances surrounding a given transaction may supply an adequate and convincing basis for finding the intent of a defendant.

Having explained the charge of conspiracy, let us return for just a moment to the second count of the indictment, which, you remember, is a substantive count. The Government is not required to prove that a defendant individually committed the substantive offense if you find that the defendant was a member of the conspiracy charged

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in the first count and that another conspirator committed the substantive offense in furtherance of the conspiracy.

Thus, for example, and purely by way of example, if A, B and C conspired and agreed to sell heroin and thereafter in carrying out the conspiracy C sold heroin, A and B are equally guilty of the substantive offense, equally with C.

A conspiracy, members of the jury, once formed is presumed to have continued until its objectives are accomplished or there is an affirmative act of termination by its members, or it is otherwise terminated, as, for instance, by an arrest. So, too, once a person is found to be a member of a conspiracy, such person is presumed to continue the membership until its termination, unless there is affirmative proof of withdrawal or disassociation.

With respect to the second count, the substantive count, the Government also relies on a section of the United States Code which in relevant part reads as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

This means that not only is the person who commits an illegal act, the person usually called a

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principal, guilty, but anyone who aids and abets in the commission of the act is likewise guilty of committing that illegal act.

In order to find that a defendant aided or abetted another to commit the offenses charged, you must find that the defendant in some way associated himself with the criminal venture, that he participated in it as something he wished to bring about, that by his act or acts he endeavored to make it succeed.

Now, members of the jury, you have been patient, these instructions are long, but I am coming to the end.

We want to speak together for a little bit about the credibility of witnesses. In weighing and determining the credibility of witnesses you rely on your experience in your business and social life, you rely on your vast experiences in the ordinary walks of life. As practical men and women, you draw on the benefits of your experience, you take into account any inconsistencies, contradictions, and conflicts in the testimony. If you should find that any witness testified falsely as to any material fact, you may reject the whole of the testimony of that witness, or you may accept such part as you do believe or you may find corroborated by other evidence in the case. You may consider whether a witness has any

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interest in the matter on trial which might affect his testimony; you may consider this interest in weighing the testimony. An interested or motivated witness is not necessarily unworthy of belief. It is only a fact to be considered by the jury in determining what weight to give the testimony.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the failure of a defendant to testify.

The Government, members of the jury, called as witnesses Tony Moy and Lai Lai Kuen, who openly admitted their involvement in the offenses here charged and their wrongdoing. In the eyes of the law they are accomplices in the same offenses charged against this defendant here on trial.

In the prosecution and detection of crime the Government, of necessity, is frequently compelled to rely upon the testimony of accomplices or persons with criminal records; often it has no choice in the matter. The Government must take the witnesses to a transaction as they are. An accomplice does not become incompetent as a witness because of participation in the criminal act charged. If accomplices could not be used, in many

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instances it would be difficult to detect and prosecute wrongdoers, and this is especially so in cases of conspiracy persecutions. Frequently it happens that only those who participated have evidence which is relevant and important in the case if a prosecution is to succeed.

The fact that a Government witness is an accomplice may be considered by you as bearing upon his or her credibility. However, it does not follow that because a person has acknowledged participation in a crime or is an accomplice, that he or she is not capable of giving a truthful version of what occurred. His or her testimony, however, should be viewed with great caution and scrutinized carefully.

You will consider whether the testimony was inspired by any motive of self-interest, personal advantage or hostility to the defendant; you will consider whether the testimony was a fabrication induced by belief, for example, that the witness would receive favorable consideration on sentencing for offenses to which there was a guilty plea. Or you will consider whether the accomplices bared themselves publicly before you, made a clean breast of their wrongdoing and told the truth. In short, did they decide after being caught to come clean and tell the truth? If you find that the testimony of an accom-

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plice was deliberately untruthful, you should reject it.

On the other hand, if upon a cautious and careful examination you are satisfied that the witness has given a truthful version and that the Government has sustained its burden of proof, then you have sufficient proof upon which to bring in a verdict of guilty.

Now, members of the jury, there are two kinds of evidence, direct and circumstantial. Direct evidence is where a witness testifies to what he or she does, what he knows of his own knowledge, something which came to him by virtue of his senses, what he saw or heard.

Circumstantial evidence is evidence of facts from which one may infer connected facts which reasonably follow in the common experience of mankind.

Perhaps I can use a simple example. You recall in the old story of Robinson Crusoe how one day he saw footprints in the sand on the beach. He did not see a man walking on the beach, but he immediately drew an inference from the fact of the footprints that a man had, in fact, been walking on the beach. That is about all there is to circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence of some further fact.

Now, members of the jury, you will be glad to

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realize that we are coming to the conclusion of these instructions, for the length of which I apologize.

I say to you that each of you jurors is entitled to his or her opinion. You should, however, exchange views among yourselves each with your fellow jurors. That is the very purpose of jury deliberation, to discuss and consider the evidence, to listen to the arguments of fellow jurors, to consult with one another and to reach an agreement based solely and wholly on the evidence if you can do so without violence to your own individual judgment. Each one must decide the case for himself or herself. But you should not hesitate to change an opinion which after discussion with your fellow jurors appears to be mistaken in the light of the discussion viewed against the evidence and the law. You are not to yield your conviction, however, simply because you were outnumbered or outweighed. Your final vote must reflect your conscientious conviction as to how the case should be decided.

Members of the jury, any verdict must be unanimous. That is, on each count the verdict must be unanimous.

The jury is not to consider or in any way to speculate as to the punishment which the defendant may receive if he is found guilty.

Under your oath as jurors you cannot allow a

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consideration of the punishment which may be imposed upon the defendant if he is convicted to influence your verdict in any way or in any sense to enter into your deliberations.

The function of a jury is to determine the guilt or innocence of the defendant on the basis of the evidence and these instructions. It is the Judge alone, the Court, who has the duty of determining the sentence if there is a conviction.

The charges here, ladies and gentlemen, are most serious. The just determination of this case is important to the public and it is equally important to the defendant.

Under your oath as jurors you must decide this case without fear or favor and solely, as I have said, in accordance with the evidence and the law.

If the Government has failed to carry out its burden as to any count or counts, your sworn duty is to bring in a verdict of not guilty as to such count or counts. If the Government has carried its burden as to any count or counts against the defendant, you must not flinch from your sworn duty, but you must bring in a verdict of guilty on such count or counts.

Now, Madam Foreman, I am giving you a copy of the indictment for the convenient use of the jury during its deliberations. I repeat, the indictment is not

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evidence; it is simply the charge, the accusation.

I am also giving Madam Foreman a form to be used simply as a guide for returning your verdict on each count. This form is not to be signed. It is only for your convenient use. Your verdict will be returned orally by Madam Foreman in open court and it goes without saying that this form is not intended to nor should it in any way influence your verdict.

If during your deliberations you wish to see any of the exhibits, Madam Foreman, you should send out a note by the marshal and we will send in the requested exhibits to you. Likewise, if you should wish any testimony read to you, Madam Foreman, likewise, you should send out a request through the marshal and your request will be considered and if granted arrangements will be made.

Now we have reached that part of the trial where we must excuse our alternate jurors, Mrs. Sanchez and Mrs. Kirk. I hope you realize that although we must excuse you now in our practice, you have served as effectively and as faithfully as if you were a member of the 12. If we did not have alternates and some emergency befell one of the 12 jurors, we would have to start the trial all over again. We excuse you with the thanks of the Court, and you may retire and take your things out of the jury room

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so it will be clear when the jury retires to deliberate.

(Alternate jurors excused.)

THE COURT: Now, ladies and gentlemen of the jury, would you please be patient for a few minutes and linger in silence while I see counsel with the reporter at the side bar for any final problems of law.

(At the side bar.)

MR. KAUFMAN: No problems.

MR. SOLOMON: No exceptions, no requests.

THE COURT: Thank you.

(In open court.)

THE COURT: Mr. Clerk, will you be good enough to swear the marshals, please.

(Marshals sworn.)

THE COURT: Madam Foreman and members of the jury, you will go to the jury room with the marshal. The case is submitted to you for your decision.

(Jury retired to begin its deliberations at 11.32 a.m.)

THE COURT: Mr. Clerk, will you mark the memorandum I gave to the jury as a Court exhibit.

(Court Exhibit 5 was marked for identification.)

xx THE COURT: Will you give counsel on each side

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a copy of that memorandum. We will await the pleasure of the jury.

(At 11.45 a.m. the following took place.)

THE COURT: We have notes from the jury, three of them. This note says;

"Bankbook; money orders; reentry permit."

MR. KAUFMAN: I have those, your Honor.

THE COURT: Show them to Mr. Solomon.

(Court Exhibit 6 was marked for identification.)

xx THE COURT: Would you give those exhibits to the marshal to give to the jury.

Eventually these notes will be marked as Court's exhibits, but I think it would be better if you were to read them yourselves. I think I know what they are aiming at, but I can't be sure.

MR. KAUFMAN: Can we request of the jury that we send the bag in this way and have them look at the heroin and have them tell us whether or not they actually want to have this bag open?

THE COURT: Why can't we open the bag? What is the problem.

MR. KAUFMAN: Your Honor, I hate to have the heroin spill out or somehow get lost in the jury room.

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I am not sure how well these individual packets are packaged. I have never handled them myself. It has always been contained in this large package.

THE COURT: What is the harm? Suppose some of it spills out?

MR. KAUFMAN: The harm?

MR. SOLOMON: They want to see the evidence.

MR. KAUFMAN: Can we at least caution the jury to be extremely careful in handling this.

27 THE COURT: Yes, of course. We don't have to take it out, we can make it so if they want to open it they can. Could they open it themselves if I send it in sealed?

MR. KAUFMAN: This is heat-sealed. You need a scissors to cut the top off, and once this is cut off there is no way to reseal it, except by probably stapling it together.

THE COURT: Why don't we make a cut along the bag so if they want to lift something out they can, but they don't have to.

MR. SOLOMON: I am going to request that the brown paper be taken out. They are asking for the narcotics, not the other items.

MR. KAUFMAN: This is all part of Exhibit 1.

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MR. SOLOMON: They specifically said they want the narcotics.

THE COURT: Well, I don't see how I can give them part of it.

MR. SOLOMON: I made my request.

THE COURT: Now, the part torn off perhaps has the exhibit number on it, and that should be stapled to the top of it. I think that I better dictate for the record what this note says, because if I send it back to them it may get lost. We are dealing with three notes which came at the same time. One note we have already disposed of. This is the second note and it says:

"We did not see the alleged physical evidence of controlled substance to check the Government's witness. It was packed in such a way as not to leave traces in the vehicle allegedly used to transport narcotics by defendants."

(Court's Exhibit 7 was marked for identification.)

xx THE COURT: I am preparing to write a note to the jury, "Exhibit 1 is sent to you. This contains the substance which may be found from the evidence to be heroin. Please handle with care."

MR. SOLOMON: Mr. Kaufman advised me, and I think

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your Honor should know this --

MR. KAUFMAN: Your Honor knows that the heroin is not now in the condition that it was allegedly in when it was contained within the radio. When those individual packets went to the chemist, he opened each one of them to test them, and those packets now may not be in the same condition that they were in when they were in the radio. That should be brought to the jury's attention, since the whole purpose of this note is to see whether or not the witness accurately testified that the heroin probably would not have leaked out of those packets.

THE COURT: Can you two agree on a statement? I am perfectly willing to tell the jury that.

MR. SOLOMON: The only thing you can tell the jury in my opinion is that the packets contained in Government's Exhibit 1 now are not in the same condition as they were when the Government says they took it out of Government's Exhibit 3. They are not in the same packs.

MR. KAUFMAN: They are the same packs, but not packaged in the same way.

THE COURT: After he opened the packet he put the heroin back in the same packet.

MR. KAUFMAN: Yes.

THE COURT: What is it that you are agreed that

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I can tell them? If there can be no agreement on what is to be told to the jury, then I can't tell them anything, because I am not going to reopen the evidence.

MR. SOLOMON: I will agree, I will take Mr. Kaufman's word for it that at the time that the packets that are in Government's Exhibit 3 were turned over to the chemist the condition they are in now was not the same.

Is that right?

MR. KAUFMAN: That is correct.

THE COURT: It is agreed that the individual packages are of heroin.

MR. KAUFMAN: Yes, your Honor.

THE COURT: But are not now in the same condition? Is that it?

MR. SOLOMON: That is right.

MR. KAUFMAN: As they were before they were turned over to the chemist.

THE COURT: It is agreed that the individual packages of heroin are not now in the same condition as when they were turned over to the Government chemist.

MR. SOLOMON: For analysis.

THE COURT: Is that agreed?

MR. KAUFMAN: Yes.

MR. SOLOMON: Yes.

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THE COURT: I am saying in this memorandum to the jury:

"Exhibit 1 is sent to you. This contains the substance which may be found form the evidence to be heroin. Please handle with care. It is agreed by both sides that the individual packages of heroin in Exhibit 1 are not now in the same condition as when they were turned over to the Government chemist for analysis." . I have signed my name.

You might ask them to keep the note, as well as that.

(Exhibits sent to jury.)

THE COURT: Then they want the testimony of Lai Lai and Moy as to whether they originally stated that the bags contained a white powder or pellets when they first saw the bag containing the heroin.

They obviously want to hear some testimony read, and I hate to have to read the whole testimony of both Lai Lai and Moy.

MR. SOLOMON: I remember asking her on cross-examination whether she ever saw heroin or knew what heroin was prior to that time. My recollection is she said no, and he also said no. That is my best recollection.

MR. KAUFMAN: They are not asking whether they

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knew beforehand.

THE COURT: "When they first saw the bag containing the heroin and bring in State's evidence No. 1."

So when they first saw the heroin in the radio set.

Did they state at any time before testifying here that it contained a white powder or pellets? Do you think we ought to ask the jury more about this third note?

MR. KAUFMAN: That is what I was about to suggest.

MR. SOLOMON: Yes.

THE COURT: What do you think about sending a note to the jury saying, "We assume from this note that the jury wants some testimony of Lai Lai and Moy read, but we are not able to tell what parts should be read. Will the jury please indicate what specific parts should be read."

MR. SOLOMON: That is agreeable.

MR. KAUFMAN: Fine.

THE COURT: I will have the clerk give this note to the marshal to give to the jury while we get the minutes.

(Court's Exhibit 8 was marked for identification.)

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(Short recess.)

THE COURT: Now we have a further note from the jury about the testimony that they want to hear, and you can look at this. It reads as follows:

"The testimony related to what Moy and Lai Lai said they believe the state of powder or granulated of the heroin was first viewed the plastic bags when they were purportedly removed from the phono-radio."

I will let counsel examine it.

(Court's Exhibit 9 was marked for identification.)

xx MR. KAUFMAN: Your Honor, I believe that calls for two portions of their testimony, No. 1, their testimony as to what happened when Chan came to the apartment and opened the radio, and No. 2, I think in a different place in the direct examination I asked both Tony Moy and Lai Lai Kuen whether the heroin containing Government's Exhibit 1 looked to be the same or identical as the heroin they saw in the radio on the ady that Chan Yuk Po brought it over in the radio. I think it calls for two different portions of the testimony.

THE COURT: Let's find the two different portions in the testimony.

Now we have the testimony of Moy. I guess

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during the lunch hour we will have to get the testimony of Lai Lai. Let's take Moy first.

We have another note. We will see what this note is.

THE MARSHAL: I wonder if you wanted me to go ahead or do you want me to wait?

THE COURT: You better go ahead and take them to lunch, and when you come back we will read this.

Now, we have another note:

"May we have the portion of the testimony read to us dealing with the defendant's statement to the narcotics officials after his arrest in which he denied bringing the radio into this country."

That is the testimony of Richard Bell.

(Court's Exhibit 10 was marked for identification.)

xx THE COURT: Now, Mr. Kaufman and Mr. Solomon, we have another note from the jury. This last note reads:

"Were Tony and Lai Lai out on bail at any time after July 16? If so, when?"

MR. SOLOMON: Your Honor, I don't think there was any testimony as to that.

MR. KAUFMAN: No testimony at all.

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MR. SOLOMON: I don't think there was any testimony.

THE COURT: I don't think that I can fairly answer that.

MR. KAUFMAN: They have to be informed there is no testimony.

THE COURT: I propose to say to them when I bring them in there is no evidence in the record from which this question can be answered. I cannot, therefore, answer the question.

Agreed?

MR. KAUFMAN: Yes.

MR. SOLOMON: Yes.

(Note marked Court's Exhibit 11 for identification.)

THE COURT: Then I think we better go and have our lunch, and the jury is going out to lunch. We will try to get back about 2 o'clock. As soon as the jury comes back I will bring them in and give them this last answer and have the testimony read.

MR. KAUFMAN: May I inquire now that the jury is out to lunch as to the location of the heroin we sent in?

THE COURT: I assume the marshal had it.

THE CLERK: The jury is out to lunch.

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THE COURT: Do you want to retain custody of the heroin?

MR. KAUFMAN: Yes.

THE COURT: We will meet here at 2 o'clock.

(A luncheon recess was taken from 1.45 p.m. to 2.00 p.m.)

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AFTERNOON SESSION

(2.00 p.m.)

THE COURT: Since the jury returned from lunch we have other notes. I believe that just before we left for our own lunch we had agreed on the parts of the testimony to be read and we had agreed that where a note could not be answered from the evidence it could not be answered at all.

MR. SOLOMON: Correct.

THE COURT: Now, the next note in point of time is:

"1. Did Chan Yuk Po have any regular source of legitimate income other than alleged gambling? Was he on a company payroll or entrepreneurship private of a legitimate business?

"2. Did he pay rent on the residence on Mulberry Street that he allegedly operated from in New York?"

MR. SOLOMON: I don't understand this jury. Your Honor told them that the defendant does not have to take the stand, therefore he doesn't have to answer any questions.

THE COURT: Of course.

MR. SOLOMON: I can't understand that note.

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THE COURT: But I think I have to say, "You have heard the evidence and I can give you the exhibits, I can have testimony read, but if questions can't be answered either from the exhibits or from the reading of testimony, I can't answer them at all."

MR. SOLOMON: There is no testimony here about this, so I can't tell you; I can only give you testimony that took place in this courtroom. There has been no testimony on his background whatsoever.

THE COURT: Is that so, Mr. Kaufman?

MR. SOLOMON: I may be stepping a little bit too far there. I am referring to the fact that he didn't testify.

MR. KAUFMAN: It is true there has been absolutely no testimony about it.

THE COURT: Well, I can't answer the jury's question about the meaning of evidence. I just am not able to answer this question, except that if there is any exhibit that they want or any testimony they want read I will be glad to have it read. If I can't answer it in that fashion, I can't answer it at all.

MR. KAUFMAN: I think we have to answer this one the same way we answered the note before.

MR. SOLOMON: There has been no testimony con-

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cerning this question.

MR. KAUFMAN: No testimony or no evidence.

MR. SOLOMON: So it can't be answered.

THE COURT: All right, then, both sides wants me to say to the jury there is no evidence on this question, so, therefore, I cannot answer that, and that is the same answer that we were going to give on the first question.

MR. SOLOMON: The question about the bail?

THE COURT: Yes.

MR. SOLOMON: Yes.

29 THE COURT: Now, as to whether he paid rent on the residence on Mulberry Street that he allegedly operated from in New York.

MR. KAUFMAN: Who are they referring to? Po or Moy

MR. SOLOMON: Who operated from --

THE COURT: I don't know. I assume they mean Chan Yuk Po.

Is there any evidence as to who paid rent?

MR. KAUFMAN: No.

THE COURT: Why don't I answer that in just the same way.

MR. SOLOMON: She testified that she lived there. That is all. They got to draw an inference from that they

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paid rent. But we can't tell them that.

THE COURT: I answer the question or I don't answer the question.

MR. KAUFMAN: The same answer.

THE COURT: There is no evidence on this question, so, therefore, I cannot answer it.

MR. KAUFMAN: Correct.

(Note was marked Court's Exhibit 12 for identification.)

THE COURT: Now, the last note:

"Can we see Lai Lai's pocketbook?"

MR. KAUFMAN: That is an easy one.

MR. SOLOMON: Is it in evidence?

MR. KAUFMAN: Sure, No. 9.

THE COURT: "Does it contain the original contents at the time of her arrest?"

MR. SOLOMON: Whatever she had on her person at the timeshe was arrested.

THE COURT: Are the contents of the bag in evidence?

MR. KAUFMAN: No, your Honor.

THE COURT: Is there anything in the bag?

MR. KAUFMAN: No.

MR. SOLOMON: Would your Honor take a look and

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see if there is anything in the bag?

THE COURT: There seems to be nothing in the bag. Now, what do I say?

"Does it contain the original contents at the time of her arrest?"

MR. SOLOMON: It is not in evidence and the answer is no.

THE COURT: The bag is in evidence.

MR. SOLOMON: That is all that is in evidence.

THE COURT: "Does it contain the original contents at the time of her arrest?"

MR. KAUFMAN: Your Honor, it is not in evidence, but when she was arrested the napkin, which is Government's Exhibit 8, with the Chinese characters on it was in the purse.

Now, obviously, the purse does not contain it, because it is a separate exhibit.

THE COURT: Is the pocketbook in evidence?

MR. KAUFMAN: Yes, it is.

THE COURT: And it has no contents in it?

MR. SOLOMON: Not at this time.

THE COURT: Isn't the answer, "At this time it doesn't contain the original contents. At this time it is empty."

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The next branch of this:

"If not, is it known if there were any other pieces of white paper found in it."

MR. KAUFMAN: That was the napkin.

THE COURT: Well, is there any testimony to that effect?

MR. KAUFMAN: I don't believe so, your Honor. I don't believe it was specifically stated at the trial that when she was arrested the napkin was in her purse.

THE COURT: Well, then, I can't answer this question.

(Note marked Court's Exhibit 13 for identification.)

xx THE COURT: Mr. Clerk, do you have the heroin?

THE CLERK: I brought the heroin in.

THE COURT: In other words, after lunch Mr. Kaufman gave you the heroin and you gave it to the marshal?

THE CLERK: Yes.

THE COURT: Then let's see if we can get the jury in.

(The jury took its place in the jury box at 2.20 p.m.)

THE COURT: Now, Madam Foreman, ladies and

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gentlemen of the jury, we will try to deal with the notes of the jury which we have not yet answered. We got in the first instance three notes at the same time. One of those notes asked for the bankbook for reentry permit, for money orders, and we simply sent those exhibits to the jury.

The second of the three notes received in the first instance said:

"We did not see the alleged physical evidence of controlled substance to check the Government's witness it was packaged in such a way as not to leave traces in the vehicle allegedly used to transport narcotics by defendant."

And then I sent an answer to the jury, memo to the jury:

"Exhibit 1 is sent to you. This contains the substance which may be found from the evidence to be heroin. Please handle with care. It is agreed by both sides that the individual packages of heroin in Exhibit 1 are not now in the same condition as when they were turned over to the Government Chemist for analysis."

Then the third of the notes received in the first instance at the same time reads:

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"Testimony of Lai Lai and Moy as to whether they stated that they originall y stated that the bags contained a white powder or pellets when they first saw the bag containing the heroin and bring in states evidence No. 1."

And we sent a memorandum to the jury:

"We assume from this note that the jury wants some testimony of Lai Lai and Moy read, but we are unable to tell what should be read. Will the jury please indicate what specific parts sho uld be read."

And then the next note received from the jury reads:

"The testimony relating to what Moy and Lai Lai said they belived the state (powder or granulated) of the heroin was first viewed the plastic bags when they were purportedly removed from phono-radio."

We have with the help of our efficient reporter located that testimony and, Mr. Reporter, will you first read from the testimony of Tony Moy.

(Testimony read.)

THE COURT: The next note was"

"May we have the portion of the testimony read to us dealing with the defendant's statements to the narcotics officials after his arrest in which he

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denied bringing the radio into this country."

And that we found is from the testimony of Agent Bell.

Mr. Reporter, would you read that testimony.

(Testimony read.)

THE COURT: We have three other notes which all raise the same problem, and I ought to try to make this explanation to the jury before I try answering these questions or giving you the answer.

After a trial of a case, either civil or criminal, the case must be decided solely on the evidence presented in court. Under our adversary system two sides adverse to each other, opposing each other, the Government and the defendant in a criminal case, a plaintiff and a defendant in a civil suit, under that system it is assumed that both sides will present all relevant evidence which is available to them. And under the law I can only give the jury exhibits which are received in evidnece, or have read testimony which was given here in court. So that if the jury asks questions which cannot be answered on the evidence presented in court, I am unable to answer it.

Now, the next note from the jury reads:

"Were Tony and Lai Lai out on bail at any time

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after July 16? If so, when."

There is no evidence on this question, therefore, I cannot answer it.

Now, the next note asks two questions:

"Did Chan Yuk Po have any regular source of legitimate income other than alleged gambling? as he on a company payroll or entrepreneurship privately of a legitimate business?

"2. Did he pay rent on the residence on Mulberry Street that he allegedly operated from in New York?"

As to those questions there is no evidence on them, and, therefore, I cannot answer them.

Now, the next note has three questions, I think.

The first question we can answer.

"Can we see the Lai Lai pocketbook?"

Yes. This pocketbook was introduced as Government's Exhibit 9, and I will give it to the marshal to take to the jury room for the jury's inspection.

"Does it contain the original contents at the time of her arrest?"

The pocketbook is empty at this time.

"If not, is it known if there were any other pieces of white paper found in it?"

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There is no evidence on this question, and, therefore, I cannot answer it.

Thank you very much, ladies and gentlemen of the jury. You may retire.

(The jury retired to continue its deliberations at 2.35 p.m.)

THE COURT: We will continue to wait for the jury.

Marshal, will you keep Chan here or in the witness room.

THE MARSHAL: I will keep him in the courtroom. I brought him down for lunch.

THE COURT: We never know when we will get another note and it is hard on you to go up and down.

(At 4.05 p.m. the following took place.)

THE COURT: We have a note from the jury:

"Should Po's role, that is, whether he was an accomplice or ringleader, be of import to our verdict? Can we make recommendations as to what we find Po's involvement to be?"

Mr. Clerk, show counsel this note.

MR. SOLOMON: I think the answer as to the second part, you can't give them any instructions to that.

THE COURT: I have not any doubt. It looks to

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me as if they don't understand my instructions either as to the conspiracy count or as to the aiding and abetting under the substantive counts, but it will take me a little while to think of a proper answer. We will have to wait a few minutes until I do. I will go into the robing room.

MR. SOLOMON: I think the only answer you can give is they can find him either guilty or not guilty. It is immaterial whether he is the king or the lackey.

THE COURT: Of course, their verdict can only be guilty or not guilty.

MR. SOLOMON: That is all I would tell them.

THE COURT: But the question:

"Should Po's role, that is, whether he was an accomplice or ringleader, be of import to our verdict?"

shows that they don't understand my instructions, and I will have to repeat some of them. Let's wait a few minutes.

(At 4.20 p.m. the following took place in the absence of the jury.)

THE COURT: I will read so that counsel can make any suggestions in the substance of what I propose to say.

I am going to take the second question first:

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"Can we make recommendations as to what we find Po's involvement to be?"

The answer is no. The jury must find the defendant guilty or not guilty, and no explanation of the verdict is necessary or permitted. Under my instructions on the law the verdict must be simply guilty or not guilty.

Anything wrong with that?

MR. SOLOMON: No, I think you are right.

THE COURT: Mr. Kaufman?

MR. KAUFMAN: No, your Honor.

THE COURT: Now, the first question:

"Should Po's role, that is, whether he was an accomplice or ringleader be of import to our verdict?"

The question indicates that the jury may not have understood my instructions. Whether the defendant was a ringleader or an accomplice is not a proper question for the jury to try to answer. Under the first count the questions for the jury are:

1. Was there a conspiracy.

2. If so, was the defendant a member of the conspiracy, that is, did he knowingly associate himself with the conspiracy.

3. Did one of the conspirators commit at least

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one overt act in this District.

If the answer to each of these questions beyond a reasonable doubt is yes, then your verdict should be guilty. If the answer to any one of the three questions is no, your verdict should be not guilty.

MR. SOLOMON: Yes, that is correct in my opinion.

THE COURT: Under the second count the proper questions for the jury are:

1. Did the defendant distribute or possess with intent to distribute heroin?

2. If so, did he do it knowingly and intentionally.

If the answer to both questions beyond a reasonable doubt is yes, then your verdict should be guilty.

If the answer to either question is no, your verdict should be not guilty.

MR. SOLOMON: I think that is a correct statement of the law, your Honor.

THE COURT: Will you bring the jury in.

(The jury took its place in the jury box at 4.25 p.m.)

THE COURT: Madam Foreman, ladies and gentlemen of the jury, there are two questions from the jury. I want to take up the second question first. The ques-

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tion is:

"Can we make recommendations as to what we find Po's involvement to be?"

The answer is no.

The jury should find the defendant guilty or not guilty, and no explanation of the verdict is necessary or permitted. Under my instructions on the law, the verdict must be either guilty or not guilty.

Now, the first question is:

"Should Po's role, that is, whether he was an accomplice or ringleader, be of import to our verdict?"

Now, members of the jury, this question indicates that the jury may not have fully understood my instructions. Whether the defendant was a ringleader or an accomplice is not a proper question for the jury to try to answer.

Under the first count the proper questions for the jury are:

1. Was there a conspiracy?

2. If so, was this defendant a member of the conspiracy, that is, did he knowingly associate himself with the conspiracy.

3. Did one of the conspirators commit at least one overt act in this District?

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If the answer to each of these three questions beyond a reasonable doubt is yes, then your verdict should be guilty. If the answer to any one of the three questions is no, your verdict should be not guilty.

Now, under the second count the proper questions for the jury are:

1. Did this defendant distribute or possess with intent to distribute heroin.

2. If so, did he do it knowingly and intentionally?

Now, if the answer to both of these two questions beyond a reasonable doubt is yes, your verdict should be guilty. If the answer to either question is no, then your verdict should be not guilty.

I am sorry that I cannot be more explicit to the jury, but I must, of course, confine myself to the principles of law.

Thank you very much. You may retire.

Mr. Clerk, will you mark this last note from the jury.

(Note was marked Court's Exhibit 14 for identification.)

xx (The jury retired at 4.30 to continue its deliberations.)

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THE COURT: The clerk tells me that as the jury was retiring the foreman of the jury asked the clerk if she could get some statement of her jury service when she was finished serving so that she would not be dropped from some class.

Is she a student?

THE CLERK: Some sort of a student.

THE COURT: She is some sort of a student and she wants to be able to present something, I suppose to show where she has been, and the clerk says that he replied to her that she should speak to the Jury Clerk downstairs and he, the Jury Clerk, will give her a certificate of service.

(At 5.00 p.m. the following took place in the absence of the jury.)

We have another note from the jury:

"Please write down three questions to Count 1 that we must answer yes or no to, and two questions to Count 2 that we must answer yes or no to."

What did you do, Mr. Solomon? You have had more experience than I.

MR. SOLOMON: In all my experience I never heard where a judge wrote out questions. It would be in the same category if they asked you for some further instruc-

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tions. That is the way I interpret it, and I would call them in and say "Listen carefully." I would lose patience, but you have patience.

THE COURT: What do you think, Mr. Kaufman.

MR. KAUFMAN: I never had experience where a jury asked for instructions written out. I believe I would go along with Mr. Solomon. I believe the instructions are simple enough for them to understand, should your Honor repeat it to them.

MR. SOLOMON: And it was so simple the way you repeated it to them.

THE COURT: I think I will try to write them down. I have my notes, and think I can reproduce them verbatim, and I believe that in the long run it would be more helpful to them if I simply write down what I told them in open court, and I will do that and be back in just a moment.

(Short recess.)

THE COURT: Maybe it would be quicker if counsel just read what I have written down.

(Giving paper to counsel.)

MR. SOLOMON: I feel you ought to read it to the jury, not send it in to them in writing, because I think instructions must be given to the jury orally by the

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Court, not in writing.

THE COURT: They have asked me to write it down and I am going to give it to them in writing.

MR. SOLOMON: Your Honor, you may do that, but I just wanted to express my opinion about it.

THE COURT: I take it that counsel have no questions that I have put the questions properly?

MR. SOLOMON: The language is perfect.

MR. KAUFMAN: No objection.

THE COURT: Then, Mr. Clerk, would you mark the note as a Court's exhibit.

(Note was marked Court's Exhibit 15 for identification.)

xx THE COURT: I think probably I ought to dictate what this note is I am sending to the jury in case for any reason it should get lost.

Under Count 1 the proper questions for the jury are:

1. Was there a conspiracy?

2. If so, was the defendant a member of the conspiracy, that is, did he knowingly associate himself with the conspiracy.

3. Did one of the conspirators commit at least one overt act in this District?

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If the answer to each of the three questions beyond a reasonable doubt is yes, the verdict should be guilty; if the answer to any one of the three questions is no, meaning that the jury cannot answer yes beyond a reasonable doubt, then the verdict should be not guilty.

Under Count 2 the proper questions for the jury are:

1. Did this defendant distribute or possess with intent to distribute heroin.

2. If so, did he do it knowingly and intentionally.

If the answer to both questions beyond a reasonable doubt is yes, the verdict should be guilty.

If the answer to either question is no, meaning that the jury cannot answer yes beyond a reasonable doubt, the verdict should be not guilty.

All right, Mr. Clerk --

MR. SOLOMON: May I state for the record this proceeding now, delivery of the written note which your Honor read into the record, is novel and new to me. I have never had this experience in my long practice, and, therefore, I should take an objection to your Honor doing that, so that the defendant's rights are protected.

THE COURT: Of course, Mr. Solomon, I understand

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ms

perfectly.

All right, Mr. Clerk, will you take this note in and ask the marshal to be sure to keep up with the notes so when the jury is discharged we will get them back.

I think I should say for our planning purposes that if we don't have a verdict at 6.15 I am going to send the jury home for the night.

And, Marshal, that is for your purposes, too. I think you have to make special arrangements?

THE MARSHAL: I can notify the cell block and have an extra man stand by.

THE COURT: We will stop here shortly after 6.15 if we don't have a verdict by that time.

(At 6.15 p.m. in the absence of the jury.)

THE COURT: Exhibit 1 is with the jury?

MR. KAUFMAN: We have Exhibit 1 back, the heroin.

THE CLERK: They gave it back to the marshal. The marshal brought it back out.

THE COURT: So, apparently, they don't need that. What about the other exhibits?

THE CLERK: The pocketbook they brought back.

THE COURT: But they have the other exhibits?

MR. SOLOMON: The bankbook and the others.

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THE COURT: The marshal is to be sure to keep overnight any exhibits that the jury has, and I guess they still have the last note?

THE CLERK: Yes.

THE COURT: He ought to keep them overnight, because I'm going to let them go now, of course, with the cautionary instructions.

Will you bring them in?

(Jury in box.)

THE COURT: Madam Foreman, ladies and gentlemen of the jury, I asked you to come in because I am going to excuse you for the night. We in recent years have followed the practices of not asking jurors to stay here and deliberate at night. My practice is at quarter past six to send the jury home, for several reasons.

In the first place, after you have heard arguments and long instructions on the law and have worked conscientiously, you get tired, and secondly, we think it perhaps a little more prudent, especially for the ladies, if they don't stay in this particular area much later than this. It's better we have you go home and get a good night's sleep in your own homes and come back here fresh tomorrow morning. So if you will come back and go directly to the jury room at 9.30 and as soon as all 12

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are gathered, then you can resume your deliberations, and the papers which you are still using the marshal will keep overnight, or the clerk.

Now, of course, this is an important period of the trial, and you will be especially careful to observe my instructions not to discuss the case amongst yourselves or with anybody else.

You may retire now and be excused until tomorrow morning at 9.30.

(Jury excused.)

MR. SOLOMON: Your Honor, will you instruct the interpreter to be here?

THE COURT: Definitely, for overnight they may think of a lot more notes. They have had more notes than any other jury in my experience.

Please try to be here at 9.30.

THE INTERPRETER: Yes, 9.30.

(Adjourned to Setember 12, 1974, at 9.30 o'clock a.m.)

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UNITED STATES OF AMERICA

vs. 74 Cr. 792

CHAN YUK PO, et al.

New York, September 12, 197 ;
9.30 o'clock a. m.

- -

(The jury resumed its deliberations at 9.30 a.m.)

(The following took place in the courtroom in the absence of the jury at 10.05 a.m.)

THE COURT: We have another note from the jury. It says:

"We would like to hear the testimony again of the agent who observed Lai Lai and/or the defendant walk from the coffee house to the apartment on Mulberry Street up and including any testimony relationg to observation of anyone exiting the apartment on Mulberry Street on July 16, 1974."

Now, suppose counsel take the note and study it and see if you can agree on the testimony.

(Court's Exhibit 16 was marked for identification.)

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THE COURT: Before we have dealt with one note we have another. As you might have observed in looking at these notes, they seem to be written by different people. This note says as I decipher it:

"When we are talking about prosse of drugs, are we talking about handing the drug on that day of arrest only."

Now, maybe counsel should look at this note.

The second note we received this morning will be marked 17.

(Court's Exhibit 17 was marked for identification.)

xx MR. KAUFMAN: In response to that note if they are asking when the relevant date of the possession of the heroin is, the answer to it is in connection with the second count, the relevant date being July 16, the date of the arrest.

In connection with the first count, the conspiracy count, any date in which Chan Yuk Po was shown to be in possession of the heroin during the alleged conspiracy is a relevant date. It depends on which count they are referring to.

THE COURT: This word "prosse," do you think that is possession?

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MR. SOLOMON: We think it is possession. It looks like possession.

MR. KAUFMAN: I think we ought to ask them what that means, because that seems to be the important word in the note.

THE COURT: Handing the drug, meaning handling the drug?

MR. SOLOMON: Yes, I think that is what it means.

THE COURT: I think it extremely dangerous to ask questions of jurors other than by writing. You get into a dialogue in the courtroom asking what is meant, and before we know it, we have invaded the privacy of their discussions. You have no idea where that might lead. It seems to me most dangerous to attempt that. It seems to me I ought to assume that they are talking about possession of the drugs, and I must say that under the first count the date of possession of any drugs handled by any of the alleged conspirators during any of the period would seem to me to be relevant, and under the second count only the date of the arrest.

MR. KAUFMAN: Yes.

MR. SOLOMON: Yes.

Are you all set?

Now wait just a moment.

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(Short recess.)

MR. KAUFMAN: Your Honor, in the note in which they make inquiry about the date of possession, the Government would request since they are asking about one of the elements of the offense, that is, possession, that the Court reinstruct the jury as to possession, including constructive possession.

THE COURT: That request is denied. Let's get the jury in.

(The jury took its place in the jury box, 10.25 a.m.)

THE COURT: Good morning, members of the jury.

We don't open court this morning as we usually do, because the jury in theory has been deliberating all night, and theoretically the court has been continuously in session. So while for practical reasons we have excused the jury, I think it really is the continuous session of the court. The court has been in session, so we don't have to open court.

Now, the first note that we had this morning asked for some testimony.

The second note asked a different question, and I am going to deal with the second note first. The second note question as we read it is:

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"When we're talking about possession of drugs are we talking about handling the drugs on that day of arrest only?"

Now, the first count, the conspiracy count, charges a conspiracy from about June 1, 1974, to the date of the filing of the indictment, which was August 7, 1974. Therefore, under this first count you may properly consider any evidence of possession or handling of drugs at any time during the period June 1-August 7, 1974.

The second count charges that on or about July 16, 1974, which was the day of arrest, Chan Yuk Po and the other two named defendants, distributed and possessed with intent to distribute heroin.

The only evidence you may properly consider under the second count, therefore, is evidence of possession or handling on or about the day of arrest, July 16, 1974. In other words, the period under the first count is different from the period under the second count.

The first note we received this morning says:

"We would like to hear the testimony again of the agent who observed Lai Lai and/or the defendant walk from the coffee house to the apartment on Mulberry Street up to and including any testimony relating to observation of anyone exiting the apart-

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ment on Mulberry Street on July 16, 1974."

We believe that the testimony you have asked for is all to be found in the testimony of Agent Lawler and Agent Mockler, and since thir testimony in total is not very long, I am going to ask the reporter to read you all the testimony of Agent Layler and then all the testimony of Agent Mockler.

(Testimony read.)

THE COURT: You may retire, ladies and gentlemen, and resume your deliberations.

(Jury retired to continue its deliberations at 10.45 a.m.)

(At 11.30 a.m. the following took place in the absence of the jury.)

THE COURT: I understand that the jury has reached a verdict.

THE CLERK: Yes.

(The jury took its place in the jury box.)

THE COURT: Mr. Clerk, will you take the verdict, please?

THE CLERK: Members of the jury, please answer to your presence as your name is called.

(The roll of the jury was called by the clerk.)

THE CLERK: Has the jury agreed upon a verdict?

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MADAM FOREMAN: Yes, we have.

THE CLERK: How do you find as to Count 1?

MADAM FOREMAN: Guilty.

THE CLERK: How do you find as to Count 2?

MADAM FOREMAN: Not guilty.

THE CLERK: Poll the jury.

(The jury was polled by the clerk.)

THE COURT: Members of the jury, before I excuse you with the thanks of the Court I would like to make two further explanations, which I do ritually in jury casesd.

First, as the presiding judge I never comment on a jury verdict. And secondly, I feel very strongly that what happens in the jury room is private and confidential among those who have served as jurors. I have no idea that anybody will ever ask you what transpired, what went on in the jury room. But if they do, my strong advice is that you preserve in confidence what happened in the jury room and make no comment, and if you like, you can cite my explanation to you as a reason.

Now, Mr. Clerk, what instructions do we have for the jury?

THE CLERK: They are to report to Room 109 for further instructions.

THE COURT: You are to report to Room 109.

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And on behalf of the Chief Judge of the court and the other judges, I want to thank you for your conscientious attention to the case on trial.

(Jury discharged.)

THE COURT: Mr. Clerk, do we have all the exhibits back?

Mr. Kaufman, did you get back the Government exhibits that were sent to the jury?

MR. KAUFMAN: I was just checking. I do not have No. 2, the reentry permit. Now I do.

Yes, your Honor, I have all the exhibits.

THE COURT: We have marked all the notes from the jury as Court's exhibits.

The marshal has returned my note to the jury in which I advised them about the three questions and the two questions, and I will ask the clerk to mark that as a Court exhibit.

(Court's Exhibit 18 was marked for identification.)

xx THE COURT: The next business, I believe, is the date of sentence?

MR. SOLOMON: He is in custody, your Honor.

THE COURT: What effect would that have, Mr. Solomon?

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MR. SOLOMON: The bail was originally set for $50,000. On my application Judge Owen reduced it to $25,000, and that is where it stands. I don't know that he can raise any bail.

THE COURT: What about Friday, October 25 at 2.30 in the afternoon, and so far as we are advised, it is in Room 10. We think we will be in Room 10, unless I can better my position, it's such a bad room.

MR. SOLOMON: May I ask your Honor instead of making my motions now, may I have the right to reserve them until the day of sentence?

THE COURT: Yes.

Now let's be clear about the bail:

Does the Government have any objection to continuing bail as it is at the moment?

MR. KAUFMAN: No objection.

Mr. Chan has not been able to make it since he has been arrested. I don't suppose he will. So the Government will have no objection to keeping bail at $25,000.

THE COURT: Well, if there was any question of making bail I would certainly consider increasing bail.

MR. KAUFMAN: I would like to make application to increase at that time.

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THE COURT: What was it originally, Mr. Solomon?

MR. SOLOMON: $50,000 and it was reduced by Judge Owen on my application to $25,000.

THE COURT: I will restore it to $50,000. Bail pending sentence is $50,000.

MR. SOLOMON: Then you are increasing it?

THE COURT: I am increasing it. I am putting it where it was originally.

Now, Mr. Solomon, certainly you can make motions on the day of sentence.

Is there any other unfinished business?

Then, Mr. Clerk, the Court will be in recess.

(Whereupon, an adjournment was taken to Friday, October 25, 1974, at 2.30 o'clock p.m.)

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THE COURT: All right.

(The Interpreter, Caroline H. Lin, was sworn.

THE COURT: All right.

What does the govenment have to say about this matter?

MR. CAREY: Your Honor, I'm appearing for Mr. Kaufman, who is out of the country on another matter.

As your Honor knows, I am not the man who prosecuted this trial --

THE COURT: I don't know who prosecuted it.

MR. CAREY: I believe it was Mr. Alan Kaufman.

THE COURT: I have no idea.

MR. CAREY: In any case, your Honor, the defendant in this case is reported to have brought into the country three pounds of the purest brown rock heroin, which is the purest heroin available in the Far East, the source of this particular man's heroin.

The wholesale value of that, your Honor, is estimated to be approximately $100,000. From that quantity of three pounds the agents who investigated this case seized people who were conspiring with the defendant in possession of 11 ounces of that cocaine. From that it was determined it was of the purest quality.

THE COURT: What is the basis for supposing that

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there was the larger quantity?

MR. CAREY: During the trial I'm informed, your Honor, the two co-defendants testified that they had been told by the defendant, who is here today for sentencing, that he had brought into this country three pounds of heroin, concealed in, I believe, a radio-phonograph.

THE COURT: I remember the circumstances of the radio.

MR. CAREY: Your Honor, the value of the heroin which was seized in this case, the 11 ounces, part of the three pounds, is estimated to be at a wholesale price of approximately 22 to 23 thousand.

Finally, your Honor, as a gauge of the level that this individual has reached in terms of violating the narcotics laws of this country, I believe there was further testimony during the trial by the co-defendants that they with the defendant had plans or that the defendant alone had informed them of his plans of bringing into this country some time after that approximately 50 to 60 pounds of the same quality of heroin.

Your Honor, I am also informed that this heroin is capable of being cut or diluted a substantial number of times, so that its initial weight is only an indication of what its final effect would be when distributed to the public, and the

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value of that, your Honor, once distributed to the public would be approximately $1,000,000.

I think that is perhaps the truest gauge of the level of this particular violator, and your Honor does not need to be informed of what effect that would have on the people who were victims of those who must commit crimes in order to provide themselves with the funds to support their narcotics addiction.

For those reasons, your Honor, as well as all the other information which is at your Honor's disposal in the presentencing report of the probation department, the government believes that a minimum sentence of probation would not be appropriate.

THE COURT: Is this man a citizen of the United States?

MR. CAREY: Your Honor, I am informed that he is a permanent resident of the United States.

THE COURT: I asked you, was he a citizen of the United States?

MR. CAREY: No, your Honor.

THE COURT: He is not a citizen?

MR. CAREY: No.

THE COURT: Is he deportable?

MR. CAREY: He is, your Honor.

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THE COURT: He is subject to deportation?

MR. CAREY: I believe he is, your Honor.

THE COURT: All right.

Mr. Solomon, have you had a chance to see the presentence report?

MR. SOLOMON: No, your Honor.

THE COURT: Suppose you take a look at it.

MR. SOLOMON: May I show it --

THE COURT: Of course. Take a few minutes to do it.

MR. SOLOMON: Thank you.

(Pause.)

MR. SOLOMON: May the record indicate, your Honor, that I asked the interpreter to read the report which your Honor handed to me a few moments ago and interpreted it to him.

From the information she gave me, I would like the record to show that she told me she had this information.

Will you see if I make the right statement, please.

THE INTERPRETER: I didn't have the information. I was the interpreter for Mr. Phillips.

MR. SOLOMON: For the probation officer.

THE INTERPRETER: Yes.

MR. SOLOMON: You explained to the defendant what

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the probation officer told you?

THE INTERPRETER: Yes.

MR. SOLOMON: That's what is contained in this report.

I have read the report, your Honor. Of course, I have no comment on that.

I just would like to make one comment on the question of what was testified to at the trial.

THE COURT: This was a case where you got an acquittal on one count.

MR. SOLOMON: He was acquitted on the substantive count.

THE COURT: That was count 2.

MR. SOLOMON: That's correct. We take the jury's verdict, we don't go behind the jury's verdict. Therefore, the jury felt that the evidence did not warrant a conviction beyond a reasonable doubt on the importation. Therefore, I say that the statements made by the witnesses at the trial, which statements, Mr. Carey, the assistant United States attorney, made to your Honor is correct, that they so testified. But I don't think that should be taken into consideration because apparently the jury disregarded those statements, the alleged statements that the defendant was supposed to have made, that he brought in 11, 3 ounces, and all that. We are

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concerned with the conspiracy count.

The defendant did not take the stand. I had a long conference with him before we decided he was not to take the stand. I know what the maximum and minimum penalties are in a case of this kind. I know your Honor's consideration has always been to see that justice is done regardless of what the sentence may be.

Now, in view of the defendant's age, in view of the fact that he has no previous record, in view of the fact that he didn't take the stand -- whether I told him not to or he decided not to is immaterial -- I hope your Honor gives those things consideration.

It is true he had some aiders and abetters. It is true that the government couldn't very well proceed with a good many of its cases without informants. Well, we can't help that. We must have that. I used them 50 years when I was in the office, as your Honor knows.

The fact of the matter is, we are bound by what the testimony is and what the man's background is. I think that a severe and harsh sentence would not be justified in this case. Your Honor knows how I feel about narcotics smugglers.

As an officer of this court it's my duty to represent them when either retained or assigned.

I think, your Honor, when I discussed -- we had a

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slight discussion about Judge Frankel's book on criminals and crime and criminal punishment, that you are the best judge, although he felt differently. You and I disagreed with his analysis. I think your Honor's determination of what the sentence should be in this case, as it has been in every case I appeared before you, and other lawyers have told me, would be proper and just. I'm only going to ask your Honor in view of the fact that the defendant has never previously been involved in any such violation, in view of the fact that he didn't take the stand and commit perjury, that your Honor give that consideration and see if you can't give him a sentence which would satisfy the demands of the statute, do justice to the government and still not make the defendant feel that he's been unjustly punished, which they all do.

I now turn him over to your Honor's determination of what the punishment shall be.

THE COURT: Mr. Chan Yuk Po, do you have anything you would like to say on your own behalf or any information you would like to give me in mitigation of punishment?

THE DEFENDANT: (Through the interpreter) Yes, I do have something to say.

THE COURT: All right.

MR. SOLOMON: Your Honor, may they both come up here?

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THE COURT: Yes, it would be easier if you, Madam Interpreter and the defendant, come up to the bench.

All right.

THE INTERPRETER: I asked him to say whatever he wants to say, but to say it slowly.

THE DEFENDANT: (Through the interpreter) I know this Moy and the lady not too long. I told them I knew them only several days and I told them I'm going to Hong Kong because my father died. My father is a citizen of America. Then both of them asked me to buy some jade, the kind of Chinese stone, asked me to bring some jade for them. I told them where you want me to buy? I have no money to pay in advance.

When you get to Hong Kong, I asked my friend to give you the money in Hong Kong. When I got there almost three to four weeks they didn't -- they didn't ask people to give me money, so I wrote a letter to them. I have quite a time. They didn't answer me when I mailed this letter. So I have a long distance call from Hong Kong.

They say, okay, wait for three days. I will give $3,000 to you.

I bought three pieces of jade, then another jade ring. When I got back to the States I came back to New York and I want to give all this jade and the ring for them.

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They don't want it. They only took one ring and a piece of jade and ten boxes of tapes, recording tapes, and also Chinese statues.

When I give this thing to them, they invited me to have supper with them. Since then I only once or very few times go to visit them in their home, but I met them along the street several times. Altogether I owe them 1,700, but whatever the witness in the other court say, I owe them so much money -- I never have money for them. The other -- they get me 3,000. The other 1,300 is for the piece of jade, a ring, the statues and tapes.

THE COURT: What was the last word?

THE INTERPRETER: Tapes.

THE COURT: Tapes of what?

THE DEFENDANT: (Through the interpreter) They ask me to buy it from Hong Kong as a recorder, tapes.

THE COURT: What were they, music?

THE DEFENDANT: (Through the interpreter) A new one, for the recorder.

THE COURT: Was it blank or did it have music on it.

THE DEFENDANT: (Through the interpreter) Nothing, blank.

THE COURT: Tapes for recording?

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THE DEFENDANT: (Through the interpreter) Yes.

THE COURT: All right.

THE DEFENDANT: (Through the interpreter) Another three weeks they invited me to their home for supper, too. They introduced a young lady to me, said this lady came from Hong Kong, and another gentleman, last name is Wong. Then we ate together in their home, supper. Then I left.

During the day they were arrested. Before they are arrested Moy call me up to meet them in coffee shop and asked me for the 1,700.

I told them -- I say I have no money now. Then the lady say -- got mad and left the coffee shop. And then Moy asked me to write a number. Do you have a pen? Try to have me write a number.

I say, yes, I have a pen. And then he give blank napkins or white paper, asked me to put down the number and he said, would you please give to that lady.

I don't know what he mean. I just rush up to give her. The time he didn't mention, what's the number of this mean. If you don't trust, you can -- if you don't believe, you can go to -- in China there's the Chinese community center. You can ask them. They will explain it to you.

So when I get the piece of paper to that lady went to the theater on Canard Street. There's a theater

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called Moon Palace to see the movie. Soon after they were arrested.

I don't know, because I was in the theater. Anything I want to explain -- I never involved with this drug business with them. If I do, why when they are arrested for more than two weeks I stay here in New York? I didn't -- I don't mean that the government agent is telling lie or truth, but the other party, they are lying and put these things to me. And there's another point I want to mention.

Last time in the other court the agents mentioned about I involved with 50 to 60 pounds of this, the heroin, and this afternoon this gentleman say 30 to 40 pounds. To tell the truth, I never have anything with me, not even a bit with me, the drugs. I never touch with these things.

I came here as a cook, a chef. Someone went to Hong Kong to invite me to come. I have a family, my wife with four children and a mother, and my mother is here under the American government's care with the social security. If I work, I have a job. I'm not going to do such kind of business.

THE COURT: All right.

MR. CAREY: May I respond?

THE COURT: All right.

MR. CAREY: Most importantly, your Honor, Mr. Po

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was at the time of his arrest in possession of a receipt indicating that he had spent two nights in a Washington D. C. hotel after the arrest of the two co-defendants who testified in this case. Furthermore, your Honor --

THE DEFENDANT: No, sir.

THE INTERPRETER: He say no.

THE COUR: Wait, let counsel finish. You just simply tell him and I'll give him a chance afterwards.

Go ahead.

MR. CAREY: Furthermore, your Honor, justice is an allusive quarry for a jury, as Mr. Curran has said. Though they may not have convicted on the second count, I submit your Honor is fully entitled to rely on the testimony which you credited that was given during this trial concerning the defendant's acts and to use that testimony in deciding what an appropriate sentence would be in this case.

THE COURT: Madam Interpreter, did you tell the defendant what the United States attorney just told me?

THE INTERPRETER: Yes.

THE COURT: Does he want to say anything about it?

THE DEFENDANT: (Through the interpreter) When I came back from Hong Kong I never go to Washington D. C. I never been there, only Boston.

THE COURT: All right.

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THE DEFENDANT: (Through the interpreter) Since the first day I came to United States I was invited by one of the restaurants in New Orleans. I worked there for 15 months and then I left New Orleans. I worked in Boston, one of the restaurants in Boston. That's all. I never been to any other place. I never been to any place.

THE COURT: The jury convicted Mr. Chan Yuk Po on the first count and acquitted him on the second count.

On the first count there is no question about the Federal Youth Corrections Act, because of the age of the defendant, it makes it impossible. Of course, the offense which he committed, is a very serious offense involving deadly drugs. I realize that the defendant this afternoon had said that he was not guilty,but it is my duty to accept the verdict of the jury and, therefore, at this time my duty is to sentence on the basis of a finding by the jury of guilt.

Now, I am told that this defendant is subject to deportation, but neither in the presentence report nor in the statements of the United States attorney have I any confidence that that is the case. If he were immediately deportable, there are some reasons which would suggest either no commitment or a very short period of commitment.

On the other hand, if the only punishment for dealing in narcotic drugs is deportation, then the deterrent

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value of punishment for a crime is reduced or eliminated. Therefore, I feel it necessary to impose a period of confinement.

On count 1 the defendant is committed to the custody of the Attorney General or his authorized representative for three years, to be followed by a special parole term of three years.

I direct the United States Attorney to notify the Immigration and Naturalization Service of this conviction and sentence so that if this defendant is deportable, he will be deported.

Now, Mr. Chan Yuk Po, you have a right to appeal, and if you are unable to pay the court of an appeal, you have the right to apply for leave to appeal in forma pauperis, which means without expense to you, without prepayment of fees and expenses. If you so request, the clerk of the court will prepare and file forthwith a notice of appeal on your behalf.

Since the defendant is already in custody, there is no question about bail pending appeal.

Bail status is continued as before, and I think that concludes the matter.

THE DEFENDANT: (Through the interpreter) Judge, I don't have any money. I don't have any money. I like t

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appeal. I am willing. I am prepared to appeal, but I have no money.

THE COURT: All right. Then you can appeal without money.

Do you have a notice of appeal, Mr. Clerk?

THE CLERK: Yes, your Honor.

THE COURT: I take it that you are requesting that a notice of appeal be filed in your behalf, and the clerk will file the notice of appeal forthwith. I have granted leave to appeal in forma pauperis.

MR. SOLOMON: Your Honor, I would like to make a statement for the record. I think it's essential for me to do so.

When I appeared on Monday, August 12, at that time it was for pleading. The defendant had appeared in court on August 10, on Friday -- no, it would be the 9th, in my absence, and I made a statement on August 12 that my absence was due to the fact that I had been in Greenhaven on another matter. Some of the friends of the defendant had come into my office and left a $200 retainer and I didn't know whether I was getting any more.

I said to your Honor I would like to be relieved. I don't want to try a case for $200. Your Honor then assigned me.

I want the record to show that although I had made an agreement as to be paid a certain sum, that some of the defendants friends did come to my office and left some additional money. So I'm taking that money, but I am not filing any claim against the government for the services rendered on your assignment to me. So I'm returning the assignment marked and set forth the reasons therefor.

I would like to say to your Honor that I was spoken to by someone, that they would like to take an appeal. I said if they have money, I will represent him. I don't want to take the appeal in forma pauperis -- I will amend that. I said to the gentleman that I honestly felt that although the defendant is entitled to take an appeal, the only question in this case would be one of fact, and on the facts in the case I'm satisfied that there is no legal grounds for the appeal.

One of the gentlemen is here now. I said to him, if I took your money and did that I would be putting my hand in your pocket, and that's what I don't want to do. However, they want to spend the money, I would recommend to get another counsel. Naturally the Court of Appeals would have to relieve me. According to the rules, I would have to make an application. I don't think it would be just for me -- as your Honor knows, the way I act in this court and in all

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courts, I don't think I should take the money for an appeal because I would have to write a brief. I would just be taking the money. I would rather not take the money on appeal even if they had it. I would rather not appeal in forma pauperis because I know I can't do anything with this defendant. It's strictly a question of factor, nothing on the law. As I said at the end of the case, there's nothing I can point out. I don't want to go to the Circuit Court of Appeals and make a fool of myself.

THE COURT: Mr. Solomon, I don't know the ins and outs of our rules or those of the Court of Appeals. If you are personally assigned as counselfor this defendant, do you continue until you are relieved by the Court of Appeals?

MR. SOLOMON: Yes, your Honor.

THE COURT: So you tell me that you will have to go to the Court of Appeals to be relieved?

MR. SOLOMON: Correct, your Honor.

THE COURT: All right. There is nothing more we can do today.

MR. SOLOMON: No. I will say good afternoon to you, sir.

THE COURT: All right, thank you.

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STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of Jan 1976 deponent served the within Appendix upon U.S. Attorney

attorney(s) for appellee

in this action, at Foley Sq. N.Y.C.

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this
22 day of Jan. 1976

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976